

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

NICHOLAS K. MERIWETHER,

Plaintiff,

v.

THE TRUSTEES OF SHAWNEE STATE UNIVERSITY—Francesca Hartop, Joseph Watson, Scott Williams, David Furbee, Sondra Hash, Robert Howarth, George White, and Wallace Edwards—in their official capacities; **JEFFREY A. BAUER**, Interim President, Provost, and Vice President of Academic Affairs at Shawnee State University, in his official capacities; **ROBERTA MILLIKEN**, Acting Dean of the College of Arts & Sciences at Shawnee State University, in her official capacities; **JENNIFER PAULEY**, Chair of the Department of English and Humanities at Shawnee State University, in her official capacities; **TENA PIERCE**, Title IX Coordinator at Shawnee State University, in her official capacities; **DOUGLAS SHOEMAKER**, Deputy Title IX Coordinator at Shawnee State University, in his official capacities; and **MALONDA JOHNSON**, Director of Human Resources and Deputy Title IX Coordinator at Shawnee State University, in her official capacities,

Defendants.

Case No: 1:18-cv-00753-SJD

THE HONORABLE SUSAN J. DLOTT

JURY TRIAL DEMANDED

PLAINTIFF’S FIRST AMENDED VERIFIED COMPLAINT (REDACTED)

Plaintiff Nicholas K. Meriwether, by and through counsel, and for his Verified Complaint against Defendants, hereby states as follows:

INTRODUCTION

1. The cornerstone of higher education is the ability of professors to participate freely in the “marketplace of ideas,” where all viewpoints can be heard and debated on their merits. That marketplace depends on free and vigorous debate among professors and students, a debate that is often reflected in an individual speaker’s choice of rhetoric. But at campuses throughout the country, this marketplace of ideas

is under attack. All too often, university officials—including those at Shawnee State University (“University”)—use a myriad of different policies to silence, censor, and restrict those who express ideas to which they or others object.

2. Seeking to participate in this marketplace, Dr. Nicholas Meriwether became a philosophy professor at the University. As such, he desires to help students seek knowledge, wisdom, and truth; to challenge them to think deeply and critically about the issues of the day; and to gain a more accurate and thoughtful perspective on human nature, how we should live, and how we should govern ourselves. In the process, he presents his own views on these issues and communicates consistently with them.

3. In January 2018, a male student demanded that Dr. Meriwether address him as a woman because he identified as such and threatened to have Dr. Meriwether fired if he declined. To accede to these demands would have required Dr. Meriwether to communicate views regarding human nature and gender identity that he does not hold, that he does not wish to communicate, and that would contradict (and force him to violate) his sincerely held Christian beliefs. Thus, he declined but offered to use whatever proper name the student preferred to accommodate this student and to make him feel as comfortable as possible without violating his own deeply-held beliefs and convictions.

4. Unsatisfied, the student complained to the University. Rather than allowing the student and Dr. Meriwether to communicate their views as they each chose, the University sought to silence Dr. Meriwether and punished him for expressing views that differ from its own orthodoxy and for declining to express its mandated ideological message. Continuing in their role as the self-appointed grammar police, Defendants threaten to punish him again if he continues to express his views. Under their policies, all professors must refer to each student—both in and out of class—using whatever pronouns the student claims reflect his gender identity. They demand

this even though the concept of gender identity is entirely subjective and fluid, even though the number of potential gender identities is infinite (with over one hundred different options currently available), and even though the number of potential pronouns has likewise multiplied in recent years—all for the purpose of lending credence to cultural ideas Dr. Meriwether does not share or wish to advance.

5. Defendants have retaliated against Dr. Meriwether for exercising his First Amendment rights, have violated his First Amendment rights to free speech and free exercise of religion, have violated the unconstitutional conditions doctrine, have deprived him of due process and equal protection of law, have denied him his right to exercise his religion under the Ohio constitution, and have breached their contract with him. Thus, this action concerns the denial of Dr. Meriwether’s fundamental and clearly established rights under the Free Speech and Free Exercise Clauses of the First Amendment, the unconstitutional conditions doctrine, the Due Process and Equal Protection Clauses of the Fourteenth Amendment, and Article I § 7 of the Ohio Constitution.

JURISDICTION & VENUE

6. This civil rights action raises federal questions under the United States Constitution, particularly the First and Fourteenth Amendments, and the Civil Rights Act of 1871, 42 U.S.C. § 1983.

7. This Court has original jurisdiction over these federal claims pursuant to 28 U.S.C. §§ 1331 and 1343.

8. This Court has authority to award the requested damages pursuant to 28 U.S.C. § 1343; the requested declaratory relief pursuant to 28 U.S.C. §§ 2201–02; the requested injunctive relief pursuant to 28 U.S.C. § 1343 and FED. R. CIV. P. 65; and costs and attorneys’ fees under 42 U.S.C. § 1988.

9. This Court has supplemental jurisdiction over the state law claims made herein pursuant to 28 U.S.C. § 1367.

10. Venue is proper in this district and division pursuant to 28 U.S.C. § 1391(b) and S.D. Ohio Civ. R. 82.1 because Defendants reside in this district and division and/or all of the acts described in this Complaint occurred in this district and division.

PLAINTIFF

11. Dr. Nicholas Meriwether is a resident of Ohio and a professor at the University.

DEFENDANTS

12. Defendants Francesca Hartop, Joseph Watson, Scott Williams, David Furbee, Sondra Hash, Robert Howarth, George White, and Wallace Edwards are, and were at all times relevant to this Complaint, members of the Board of Trustees of Shawnee State University (hereinafter collectively, "Trustee Defendants"), a public university organized and existing under the laws of Ohio, and are responsible for, among other things, the adoption and authorization of policies that govern faculty expression at the University, including the policies challenged herein.

13. As members of the Board of Trustees, the Trustee Defendants have the responsibility for final policymaking authority for rules and regulations that govern the University, including the policies governing faculty members.

14. Each of the Trustee Defendants is responsible for the enactment, amendment, and repeal of Board of Trustee policies, including those challenged herein.

15. As members of the Board of Trustees, the Trustee Defendants possess the authority to change and enforce the policies challenged herein.

16. The Trustee Defendants have not modified the policies challenged herein governing faculty to comply with constitutional mandates.

17. Each of the Trustee Defendants acquiesces in, sanctions, approves, and supports the actions of the other Defendants in enforcing the policies and procedures governing faculty members, including the policies challenged herein, against Dr.

Meriwether.

18. None of the Trustee Defendants have instructed University personnel, including the other Defendants, to change or alter the policies and practices challenged herein to comply with constitutional mandates or to change the way those policies are applied to faculty members, including Dr. Meriwether.

19. Defendant Jeffrey A. Bauer is the Interim President of the University, having assumed that position on September 14, 2018.

20. Before September 14, 2018, Defendant Bauer was at all other times relevant to this Complaint the Provost and Vice President of Academic Affairs at the University.

21. As interim president, Defendant Bauer is the chief executive, educational, and administrative officer of the University.

22. Defendant Bauer's authority and powers include oversight and control of the University.

23. Defendant Bauer's duties include, among others, authorizing, executing, enforcing, and implementing the policies governing faculty members at the University and overseeing the operation and management of the University.

24. As interim president, Defendant Bauer directly oversees Defendant Pierce.

25. Both as interim president and as provost, Defendant Bauer directly oversees Defendant Milliken.

26. As interim president, Defendant Bauer has the responsibility for final policymaking authority concerning faculty members at the University.

27. As interim president, Defendant Bauer possesses the authority and responsibility for governing, overseeing, and disciplining faculty members at the University.

28. As interim president and as provost, Defendant Bauer is and was aware of the retaliatory and unconstitutional actions authorized by and occurring under the

challenged policies and has not instructed University personnel, including the other Defendants, to change or alter either the policies or the actions taken pursuant to those policies to comply with constitutional mandates.

29. As interim president, Defendant Bauer has the authority to review, approve, or reject the decisions of other University officials, including the other Defendants, regarding the policies challenged herein.

30. Defendant Bauer has authorized, approved, and implemented the policies that are challenged herein and that are being used to restrict Dr. Meriwether's expression.

31. Defendant Bauer has confirmed, sanctioned, approved, and ratified University officials' application of the policies challenged herein to Dr. Meriwether in a discriminatory and retaliatory fashion.

32. Defendant Roberta Milliken is, and was at all times relevant to this Complaint, the Acting Dean of the College of Arts and Sciences at the University.

33. Defendant Milliken possesses the authority and responsibility for governing and regulating faculty in the College of Arts and Sciences at the University.

34. Defendant Milliken's duties include overseeing the various departments that comprise the College of Arts and Sciences at the University, including the Department of English and Humanities.

35. Defendant Milliken's duties include overseeing Defendant Pauley and Dr. Meriwether.

36. Defendant Jennifer Pauley is, and was at all times relevant to this Complaint, the Chair of the Department of English and Humanities at the University.

37. Defendant Pauley possesses the authority and responsibility for governing and regulating faculty in the Department of English and Humanities at the University.

38. Defendant Pauley's duties include overseeing Dr. Meriwether.

39. Defendants Milliken and Pauley each possesses the authority to interpret and enforce the University policies challenged herein.

40. Defendant Tena Pierce is, and was at all times relevant to this Complaint, the Title IX Coordinator at the University.

41. Defendant Pierce's duties include overseeing the University's Title IX office and compliance efforts.

42. Defendant Pierce's duties include overseeing Defendants Shoemaker and Johnson.

43. Defendant Douglas Shoemaker is, and was at all times relevant to this Complaint, a Deputy Title IX Coordinator at the University.

44. Defendant Malonda Johnson is, and was at all times relevant to this Complaint, a Deputy Title IX Coordinator at the University.

45. Defendants Pierce, Shoemaker, and Johnson each possesses the authority to enforce the University policies challenged herein and to recommend changes to them.

46. Defendants Bauer, Milliken, Pauley, Pierce, Shoemaker, and Johnson, independently and in consultation with each other, enforced the policies challenged herein against Dr. Meriwether.

47. Defendants Bauer, Milliken, Pauley, Pierce, Shoemaker, and Johnson each has the authority under the policies challenged herein to investigate, recommend disciplinary actions, and impose disciplinary actions on faculty at the University.

48. In executing their respective responsibilities, Defendants Bauer, Milliken, Pauley, Pierce, Shoemaker, and Johnson each implements the policies challenged herein.

49. Defendants Bauer, Milliken, Pauley, Pierce, Shoemaker, and Johnson, independently and in consultation with each other, are responsible for enforcing the policies challenged herein and applying them to Dr. Meriwether.

50. Defendants Bauer, Milliken, Pauley, Pierce, Shoemaker, and Johnson have failed to recommend any changes to the policies challenged herein or to how those policies are enforced to comply with constitutional mandates.

51. Defendants Bauer, Milliken, Pauley, Pierce, Shoemaker, and Johnson have failed to stop University officials, including each other and the other Defendants, from applying the policies challenged herein to faculty, including Dr. Meriwether.

52. Each and every Defendant is sued in his or her official capacity.

FACTUAL BACKGROUND

I. Defendants' Unconstitutional Nondiscrimination Policies

53. Shawnee State University is a public four-year college in the University System of Ohio and receives funding from the State of Ohio in order to operate.

54. University officials are bound by the policies adopted by the Trustee Defendants and the University president.

55. Defendants have adopted and enforced a series of policies that govern faculty expression, including the following (hereinafter collectively, "Defendants' *Nondiscrimination Policies*"), portions of which Dr. Meriwether challenges:

- a. Defendants' *Non-Discrimination and Sexual Harassment Policy*, a true, accurate, and correct copy of which is attached to this Complaint as Exhibit 1; and
- b. Defendants' policy entitled *Reporting & Investigating Sexual Assault, Sexual Misconduct & Other Forms of Discrimination*, a true, accurate, and complete copy of which is attached to this Complaint as Exhibit 2.

56. Dr. Meriwether challenges as-applied the provisions of Defendants' *Nondiscrimination Policies* that prohibit and define "gender identity" discrimination. *See infra* ¶¶ 61–85.

57. Dr. Meriwether challenges as-applied the disciplinary actions taken against him pursuant to Defendants' *Nondiscrimination Policies*.

58. Dr. Meriwether challenges facially the inclusion of “gender identity” in Defendants’ *Nondiscrimination Policies* because this results in vague and overbroad restrictions upon his protected expression and grants Defendants unbridled discretion to restrict (or punish him for) his protected expression, among other constitutional flaws.

59. The Trustee Defendants approved and adopted the University’s *Non-Discrimination and Sexual Harassment Policy*. See Ex. 1 at 1.

60. Defendants’ policy entitled *Reporting & Investigating Sexual Assault, Sexual Misconduct & Other Forms of Discrimination* was approved by the University president. See Ex. 2 at 1.

61. Defendants’ *Nondiscrimination Policies* “serve[] to ensure that there are University structures and processes in place that prohibit discrimination against any individual because of . . . gender identity. . . .” Ex. 1 at 1; accord Ex. 2 at 1 (noting that Defendants’ policy entitled *Reporting & Investigating Sexual Assault, Sexual Misconduct & Other Forms of Discrimination* “serves to implement the . . . provisions of Policy 5.01 [*i.e.*, Ex. 1]).

62. If Defendants’ *Nondiscrimination Policies* are violated, the University “will take steps, whether individual or systemic, to stop the alleged . . . discrimination, prevent its recurrence, eliminate any hostile environment, and remedy the discriminatory effects on the complainant and others.” Ex. 2 at 11 ¶ 17.0.

63. Defendants’ *Nondiscrimination Policies* define “sex and gender based discrimination” to include “[n]egative or adverse treatment based on . . . gender identity . . . and the treatment denies or limits the individual’s ability to obtain the benefits of Shawnee State’s programs or activities.” Ex. 2 at 12 ¶ 18.3.

64. Defendants’ *Nondiscrimination Policies* define “gender identity” as a “person’s innermost concept of self as male or female or both or neither—how individuals perceive themselves and what they call themselves.” Ex. 2 at 12 ¶ 18.4.

65. Defendants' *Nondiscrimination Policies* note that "[o]ne's gender identity can be the same or different than the sex assigned at birth." Ex. 2 at 12 ¶ 18.4.

66. Under Defendants' *Nondiscrimination Policies*, students may select any gender identity they choose because the selection is based entirely on an individual student's subjective feelings.

67. Defendants claim that "[t]here are a wide range of gender identities, including man, woman, transgender, genderqueer, etc." A true, accurate, and complete copy of the LGBTQIA webpage from Defendants' Campus Counseling Services Office is attached to this Complaint as Exhibit 3.

68. By using the term "genderqueer," Defendants claim that there are an infinite variety of gender identities because they define this term to mean a person "whose gender identity is neither woman or man, both woman and man, somewhere in between, or is some combination of genders." Ex. 3 at 4.

69. Defendants note that gender identity is completely subjective, saying that "[s]ince gender identity is internal, one's gender identity is not necessarily visible to others." Ex. 3 at 4.

70. Currently, some sources say that there are over one hundred different options for one's gender identity, including ones that "refuse[] to be categorized," that are "affected by mood swings," or that "change[] depending on which friend you're with."¹

71. Those sources say that this "is an on-going list of gender identities" and that each individual can customize his gender identity by "mix[ing] and match[ing] your own prefixes and suffixes to create the identity that best describes you."²

72. Other sources note that the number of possible gender identities is infinite.³

¹ See, e.g., *Genderfluid Support*, available at <http://genderfluidsupport.tumblr.com/gender> (last visited Jan. 28, 2019).

² *Id.*

³ See, e.g., Marco A. Hildalgo, Diane Ehrensaft, et al., *The Gender Affirmative Model: What We Know and What We Aim to Learn*, 56 HUMAN DEVELOPMENT 285, 288 (2013)

73. Under Defendants' *Nondiscrimination Policies*, students may demand that professors refer to them by any pronoun they choose, from the standard English pronouns (e.g., "he" or "she"), to the standard pronouns applied in a nonstandard way (e.g., "they" used to refer to one person), to those invented within the last few years (e.g., "ze," "zie," "sie," "hir," "hirs," "zie," "xe," "xem," "xyr," "xyrs," "per," "ve," "ver," "vis," "fae," "faer," "ae," "aer," "e," "ey," "em," "eir," "eirs," "tey," "ter," "tem," "ters"),⁴ to any others a student idiosyncratically requests.

74. According to some sources, the number of possible pronouns is infinite because "[a]ny combination is possible."⁵

75. Under Defendants' *Nondiscrimination Policies*, professors have two choices when referring to students: (1) eliminate all sex-based titles and all pronouns when speaking to all students, which is impossible, impractical, and unreasonable given the way professors speak, particularly in classes that feature significant and frequent class discussion; or (2) use pronouns that refer to each student's gender identity, even though that gender identity may change from day to day, may change based on which friends the student is with, or may change based on the student's mood, among other possibilities.

76. Defendants' *Nondiscrimination Policies* specify that "[s]exual harassment can take two forms—quid pro quo or hostile environment." Ex. 2 at 12 ¶18.6.2.

77. Defendants' *Nondiscrimination Policies* define "hostile environment in the educational context" to include "any situation in which there is harassing conduct that limits, interferes with or denies educational benefits or opportunities, from both

(advocating for "self-acceptance within an infinite variety of authentic gender selves").

⁴ See, e.g., Univ. of Wis., Milwaukee, Lesbian, Gay, Bisexual, Transgender Res. Ctr., *Gender Pronouns*, available at <https://uwm.edu/lgbtrc/support/gender-pronouns/> (last visited Jan. 28, 2019).

⁵ See, e.g., Univ. of Cal., Davis, LGBTQIA Res. Ctr., *Pronouns*, available at <https://lgbtqia.ucdavis.edu/educated/pronouns> (last visited Jan. 28, 2019).

a subjective (the complainant's) and an objective (reasonable person's) viewpoint." Ex. 2 at 12–13 ¶ 18.6.2.2.

78. Defendants use the definition of “hostile environment” from this sexual harassment provision when assessing claims of gender identity discrimination.

79. Defendants' *Nondiscrimination Policies* specify that the “determination of whether an environment is ‘hostile’ is based on the totality of the circumstances.” Ex. 2 at 13 ¶ 18.6.2.2.

80. Defendants' *Nondiscrimination Policies* define “gender identity” using such elusive and subjective terminology that they give professors no notice as to what constitutes gender identity, what constitutes gender identity discrimination, and how to avoid charges of such discrimination.

81. Defendants' *Nondiscrimination Policies* provide no objective guidelines, standards, or criteria for University officials to use when deciding what constitutes gender identity or gender identity discrimination, thereby granting those officials unbridled discretion to restrict expression.

82. Defendants, by policy and practice, apply their *Nondiscrimination Policies* to regulate the expression of individual faculty members.

83. Defendants, by policy and practice, apply their *Nondiscrimination Policies* to regulate all interactions professors have with students, whether in the classroom or outside of it.

84. If a full-time faculty member violates Defendants' *Nondiscrimination Policies*, he is subject to discipline under the policies outlined in “the article titled ‘Complaint Resolution and Disciplinary Process’ in the collective bargaining agreement between the University and the Shawnee Education Association [hereinafter, ‘Union’].” Ex. 2 at 10 ¶ 16.2.1.1. A true, accurate, and complete copy of this *Collective Bargaining Agreement* is attached to this Complaint as Exhibit 4.

85. Under the *Collective Bargaining Agreement*, a faculty member who violates

Defendants' *Nondiscrimination Policies* is subject to a range of disciplinary actions, from a "written warning" to immediate "[t]ermination." Ex. 4 at 110.

II. Defendants' Enforcement of Their Unconstitutional Policies

A. Dr. Meriwether's Theological Beliefs

86. Dr. Meriwether is a professing evangelical Christian and a member of the Presbyterian Church of America, who strives to live out his faith on a daily basis.

87. Dr. Meriwether's Christian faith governs the way he thinks about human nature, marriage, gender, sexuality, morality, politics, and social issues, and it causes him to hold sincerely-held religious beliefs in these areas.

88. Dr. Meriwether's convictions concerning human nature, the purpose and meaning of life, and ethical standards that are to govern human conduct are drawn from the Bible.

89. Dr. Meriwether believes that God created human beings as either male or female, that this sex is fixed in each person from the moment of conception, and that it cannot be changed, regardless of an individual's feelings or desires.

90. Dr. Meriwether also believes he cannot affirm as true ideas and concepts that are not true, as this would violate Biblical injunctions against dishonesty and lying.

91. Dr. Meriwether also believes that he is required to treat each person with dignity, love, and care, as each is an individual created in the image of God.

92. Because of his sincerely held religious beliefs, Dr. Meriwether objects to communicating a University-mandated ideological message regarding gender identity that he does not believe, that he does not wish to communicate, and that contradicts (and would force him to violate) his sincerely held religious beliefs.

B. Dr. Meriwether's Distinguished Career at Shawnee State University

93. In the fall of 1996, Dr. Meriwether joined the University faculty as an assistant professor in the Department of English and Humanities.

94. In 1999, Dr. Meriwether was promoted to associate professor at the

University and received a continuing contract, which at the time was the same as obtaining tenure.

95. In 2011, Dr. Meriwether was promoted to full professor at the University.

96. On three separate occasions between 2010 to the present, Dr. Meriwether has also taught philosophy classes in German as a Gastdozent (*i.e.*, guest lecturer) at the Pädagogische Hochschule in Ludwigsburg, Germany.

97. In 2017, Dr. Meriwether taught two courses in Berlin, Germany with Western Kentucky University's Kentucky Institute for International Studies.

98. At the University, Dr. Meriwether has focused his scholarship and teaching on the intersection of philosophy, ethics, religion, and political theory.

99. As a graduate student, Dr. Meriwether specialized in the areas of ethics, social and political philosophy, and the history of philosophy.

100. At the University, Dr. Meriwether teaches or has taught a variety of philosophy courses, including the following:

- a. Ethics: focusing on human flourishing, natural law, and the split between pre-modern and modern approaches to ethics;
- b. Political Philosophy: surveying the great political ideas from Plato to Rawls, including a survey of Reformation political thought.
- c. Judaism, Christianity, and Islam: examining the historical engagement of the three religions, the question of religious militancy, and apologetical issues.
- d. Ethics and Technology in the 21st Century: focusing on issues of bioethics and biotechnology.
- e. History of Christian Thought: examining the development of Christian doctrine from the early church to the modern period.
- f. Introduction to Philosophy: covering the major ideas of Western philosophy chronologically from Plato to Nietzsche, with a special

emphasis on the development of modern philosophy from Descartes and Hume to Kant.

101. During his career at the University, Dr. Meriwether has also published at least four scholarly articles and a review essay and presented at a minimum of eleven scholarly conferences.

102. For the past several years, Dr. Meriwether has been researching and writing a multi-volume work that examines the intersection of philosophy, ethics, religion, and political theory from the standpoint of historic Reformed theology. One volume is currently under review for publication as a stand-alone work.

103. At the University, Dr. Meriwether has served on the Faculty Senate (including serving as its vice president at one time); led multiple study-abroad trips; designed a baccalaureate degree program in Philosophy and Religion; introduced a minor in Philosophy program; served on various committees; and hosted, moderated, and spoken at numerous panels and colloquia.

104. Over the course of his career, Dr. Meriwether has belonged to the American Philosophical Association, the Society of Christian Philosophers, and the Evangelical Philosophy Society.

105. Before the spring of 2018, Dr. Meriwether was never the subject of any University disciplinary actions.

C. Dr. Meriwether's Unsuccessful Efforts in 2016 to Persuade Defendants to Respect First Amendment Rights

106. In August 2016, Dr. Meriwether received an e-mail from Union president Chip Poirot, regarding the U.S. Department of Education's recent "Dear Colleague" letter and how it addressed issues related to transgenderism. A true, accurate, and complete copy of this e-mail string is attached to this Complaint as Exhibit 5. (In February 2017, the U.S. Department of Justice and U.S. Department of Education

“decided to withdraw and rescind” this “Dear Colleague” letter.⁶)

107. In these e-mails, Dr. Poirot informed faculty members that they could face disciplinary action from the University if they “refused to use a [student’s] requested name or pronoun.” Ex. 5 at 6–7.

108. Dr. Poirot also indicated that these restrictions on how professors speak could apply outside the classroom. Ex. 5 at 7.

109. During a presentation on this issue, Dr. Poirot told faculty members that if they did not heed these restrictions, they could be suspended or dismissed.

110. Shortly before October 27, 2016, Dr. Meriwether wrote Defendant Milliken, asking what University policies required of faculty on issues related to gender identity.

111. On October 27, 2016, Defendant Milliken visited Dr. Meriwether’s office to answer his questions.

112. Defendant Milliken stated that Dr. Meriwether must utilize a student’s preferred pronoun, regardless of what pronoun the student requested he use and regardless of the professor’s convictions or views on the subject.

113. Defendant Milliken stated that a professor’s academic freedom and free speech rights has no bearing on whether he must use a pronoun that reflects a student’s self-asserted gender identity.

114. Defendant Milliken stated that a professor would be subject to administrative disciplinary procedures if he refused to use a pronoun that reflects a student’s self-asserted gender identity.

115. Dr. Meriwether asked whether the University had any policies that outlined how professors must respond to a student’s demand to use a pronoun that reflects

⁶ U.S. Dep’t of Justice & U.S. Dep’t of Educ., “Dear Colleague” Letter, Feb. 22, 2017, available at <https://www.hlregulation.com/files/2017/02/colleague-201702-title-ix1-1.pdf> (last visited Jan. 28, 2019).

that student's self-asserted gender identity.

116. Defendant Milliken stated that the University does not need to have policies on this subject because students have a right to be referred to by their self-asserted gender identity and faculty must comply or be disciplined.

117. Sometime around November 3, 2016, Defendant Pauley discussed issues related to transgenderism and gender identity with Dr. Meriwether.

118. During this meeting, Defendant Pauley claimed that adherents to the Christian religion are primarily motivated out of fear.

119. Defendant Pauley also claimed that the Christian doctrines regarding hell are harmful and should not be taught and that anyone who believes hell exists should not be allowed to teach these doctrines.

120. Defendant Pauley also stated that faculty members who adhere to a certain religion should be banned from teaching courses regarding that religion.

121. Defendant Pauley stated that the purpose of higher education is to liberate students, that religion oppresses students, and thus, the presence of religion in higher education is counterproductive.

122. In saying these things, Defendant Pauley exhibited hostility toward Dr. Meriwether and his religious beliefs.

123. On November 7, 2016, Dr. Meriwether sent Defendant Milliken an e-mail, asking to see the University's written policies on this subject. A true, accurate, and complete copy of this e-mail is attached to this Complaint as Exhibit 6.

124. That same day, Defendant Milliken e-mailed Dr. Meriwether to say "there is no formal policy specific to transgender students, faculty, or staff at the [U]niversity. However, the [U]niversity does have a non-discrimination policy that includes 'gender identity.' (See policy 5.01 and its reporting procedure 5.01:02 [*i.e.*, Defendants' *Nondiscrimination Policies*].)" Ex. 6 at 1.

D. Dr. Meriwether's Ill-Fated Efforts to Exercise His First Amendment Rights in 2018 and Defendants' Initial Reactions

125. In January 2018, Dr. Meriwether returned from a semester-long sabbatical and began teaching a new set of classes, including Political Philosophy.

126. In his classes, Dr. Meriwether regularly calls on students to answer questions about the assigned readings and to participate in class discussions. In any given class period, Dr. Meriwether may call upon five to ten students, and he calls on all students several times over the course of a semester. To him, using the Socratic method of instruction is fundamental to teaching philosophy because it helps students learn to defend their positions, allows flawed reasoning to be identified, and increases the level of engagement with the concepts being taught.

127. However, a student's grade does not depend on how frequently he or she speaks in class. Rather, a student satisfies the participation component of the course simply by being prepared to give his or her answers to the assigned study questions when called upon to do so.

128. On January 9, 2018, during the first class of Political Philosophy, Dr. Meriwether responded to a question from a student, Doe, by saying, "Yes, sir."

129. This class was the first time Dr. Meriwether interacted with Doe.

130. Dr. Meriwether responded in this fashion because Doe is male.

131. Dr. Meriwether responded in this fashion also because Doe appeared male to the point that, in Dr. Meriwether's opinion, no one upon seeing Doe would have assumed that he was female (*i.e.*, that he was biologically female).

132. Before this interaction, Dr. Meriwether had received no information from the University indicating Doe's sex or gender identity.

133. Since the early 1990s, Dr. Meriwether has referred to all students in his classes by their last names and a title (*i.e.*, "Mr.," "Ms.," "Mrs.," "Miss") and as "sir" or "ma'am."

134. Dr. Meriwether has always used the titles and pronouns that refer to a

student's biological sex.

135. Dr. Meriwether has never knowingly used feminine titles and pronouns to refer to men or masculine titles and pronouns to refer to women.

136. Dr. Meriwether refers to students in this fashion to foster an atmosphere of seriousness and mutual respect that is befitting the college classroom.

137. Dr. Meriwether believes that this formal manner of addressing students helps them view the academic enterprise as a serious, weighty endeavor.

138. Dr. Meriwether has also found that addressing students in this fashion helps them learn how to accept and discuss in a respectful fashion the different (and often opposing) views many of their fellow students hold on controversial issues.

139. Dr. Meriwether has found that addressing students in this fashion is an important pedagogical tool in all of his classes, but especially in Political Philosophy where he and students discuss many of the most controversial issues of public concern.

140. After class on January 9, 2018, Doe approached Dr. Meriwether, stated that he was transgender (*i.e.*, that he identified as female), and demanded that Dr. Meriwether refer to him as a woman (*i.e.*, with feminine titles and pronouns).

141. After a brief hesitation, Dr. Meriwether responded by saying that he was not sure he could comply with Doe's demand and that he was not sure students can dictate how professors must refer to them.

142. At this point, Doe became belligerent, circling around Dr. Meriwether and getting in his face in a threatening fashion.

143. While doing this, Doe told Dr. Meriwether, "Then I guess this means I can call you a cunt."

144. Before walking away, Doe promised to see to it that Dr. Meriwether would be fired if he did not accede to Doe's demands.

145. That afternoon, Dr. Meriwether reported Doe's conduct to Defendant Pauley,

who found it and his use of profanity appalling.

146. Defendant Pauley then relayed her conversation with Dr. Meriwether to Dr. Marc Scott, a professor at the University and president of the faculty senate.

147. The next day, fearing that Doe would behave belligerently or even violently in class, Dr. Meriwether asked a security guard if security personnel could be in the vicinity when his Political Philosophy class met again on January 11, 2018.

148. After hearing how Doe had misbehaved, the security officer recommended that Dr. Meriwether report the misbehavior to the Dean of Students.

149. On January 10, 2018, Dr. Scott e-mailed Defendant Shoemaker, informing him of the Doe matter and noting that a Title IX complaint was possible. A true, accurate, and complete copy of this e-mail is attached to this Complaint as Exhibit 7.

150. Early on the morning of January 11, 2018, Dr. Meriwether reported the incident to the Dean of Students via e-mail, copying Defendant Pauley. A true, accurate, and complete copy of this e-mail is attached to this Complaint as Exhibit 8.

151. Later that morning, the Dean of Students e-mailed Defendant Shoemaker, informing him of the e-mail she had received from Dr. Meriwether.

152. That same morning, Defendant Shoemaker met with Doe, apprised Defendant Milliken of Doe's complaint, and advised her on how to proceed.

153. Just before noon on January 11, 2018, Defendant Milliken visited Dr. Meriwether's office to discuss this situation.

154. Defendant Milliken advised Dr. Meriwether to begin referring to all students by their last names only and to eliminate all sex-based references from his expression.

155. Dr. Meriwether explained that referring to students by last names alone would undermine the serious pedagogical environment he seeks to create because that is the way people refer to one another in junior high or on an athletic team. It is not the way scholars, engaged in a serious, respectful enterprise, refer to one another.

156. In addition, it is unreasonable, impractical, and impossible either to remove

all pronouns from one's speech when leading class discussions or to keep track of which pronouns to use for each student, especially when the possible pronoun options are so numerous and a student's preference could change at any time.

157. Dr. Meriwether proposed instead that he would continue referring to all of his students as he had for years, but he would accommodate Doe by referring to him by his last name.

158. At the time, Defendant Milliken indicated that she approved this arrangement, though she later changed her mind.

159. Meanwhile, Doe continued to attend Dr. Meriwether's Political Philosophy class without incident and frequently contributed to class discussions, often one to three times or more per class period.

160. On January 25, 2018, Defendant Milliken again visited Dr. Meriwether's office to discuss the Doe matter.

161. Defendant Milliken announced that Doe was not satisfied with the accommodation that Dr. Meriwether had proposed on January 11, 2018 and had threatened to file a Title IX grievance over Dr. Meriwether's expression.

162. Defendant Milliken then explicitly rejected the accommodation Dr. Meriwether proposed on January 11, 2018 (*i.e.*, referring to Doe by his last name only and referring to all other students the same way Dr. Meriwether had done for years).

163. Defendant Milliken threatened Dr. Meriwether, stating that if he did not comply with Doe's (and now her own) demands, he would be violating Defendants' *Nondiscrimination Policies*.

164. In late January or early February 2018, Dr. Eugene Burns, an official with the Union and a faculty member at the University, told Dr. Meriwether that he could be suspended or dismissed if he continued to refuse to refer to students using titles and pronouns that reflect each students' self-asserted gender identity.

165. During his February 1, 2018, Political Philosophy class, Dr. Meriwether

inadvertently referred to Doe using the title “Mr.” before immediately correcting himself (*i.e.*, saying something like “Mr. Doe—I mean, Doe”).

166. In early February 2018, Doe also spoke with Defendant Pierce, indicating that his complaint had not been resolved and threatened to contact a lawyer if it was not resolved quickly to his satisfaction.

167. Defendant Pierce then contacted Defendant Shoemaker so that further action could be taken, and ultimately Defendants agreed that Defendant Milliken should take the next steps.

168. On February 12, 2018, Defendant Milliken again visited Dr. Meriwether’s office to see if he had decided how he would proceed in light of their January 25th conversation.

169. During this conversation, Dr. Meriwether asked Defendant Milliken to clarify what would be allowed under Defendants’ *Nondiscrimination Policies*.

170. Specifically, he asked whether he would be complying with those policies if he (1) referred to all students by their self-asserted gender identity and (2) placed a disclaimer in his syllabus, noting that he was doing so under compulsion and setting forth his personal and religious beliefs about gender identity.

171. Defendant Milliken informed Dr. Meriwether that this disclaimer approach would still violate Defendants’ *Nondiscrimination Policies*.

172. Dr. Meriwether explained that he was willing to refer to Doe by whatever legal name he preferred (*i.e.*, first or last) without using any titles but that he was not willing to refer to Doe as a woman (*i.e.*, with feminine titles or pronouns).

173. Dr. Meriwether also explained that he was not willing to stop referring to all other students by their last names and sex-based titles.

174. Defendant Milliken responded by saying, “Well, you know what this means.”

175. In saying this, Defendant Milliken threatened Dr. Meriwether with disciplinary action under Defendants’ *Nondiscrimination Policies*.

176. During the rest of the semester, Doe remained in Dr. Meriwether's Political Philosophy class.

177. During the rest of the semester, Dr. Meriwether called on Doe regularly, allowing him to participate in class discussions on the same basis as any other student.

178. During the rest of the semester, Doe participated frequently in class discussions in Dr. Meriwether's Political Philosophy class, expressing freely his views on whatever topic the class was discussing at each given time.

179. During the rest of the semester, Doe volunteered to speak in class and express his views, even when it was not his turn to answer the assigned study questions.

180. During the rest of the semester, Doe participated in class discussions more often than was required and as much as (of not more than) any other student.

181. During the rest of the semester, Doe displayed no anxiety, fear, or intimidation when attending class or participating in class discussions.

182. At the end of the semester, Dr. Meriwether awarded Doe a high grade for the Political Philosophy class, reflecting his very good work in the class and his frequent participation in class discussions.

183. Throughout the spring 2018 semester, Doe was never denied any of the benefits of Dr. Meriwether's Political Philosophy class.

E. Defendants' Unconstitutional Disciplinary Actions & Speech Code

1. Defendants Investigate Dr. Meriwether

184. In short order, Defendant Milliken followed through on her threats, threats that were as old as 2016 and as new as February 12, 2018.

185. On February 13, 2018, Defendant Milliken sent Dr. Meriwether a letter outlining again her position on this matter. A true, accurate, and complete copy of this letter is attached to this Complaint as Exhibit 9.

186. Defendant Milliken stated that her letter was “a formal notification that you are expected to comply with [Defendants’ *Nondiscrimination Policies*] by treating all students the same, irrespective of their gender identity. Ex. 9 at 1.

187. Defendant Milliken stated that if Dr. Meriwether continued to refuse to accede to Doe’s demands, “the University may conduct an investigation” and he “could be subject to informal or formal disciplinary action.” Ex. 9 at 1.

188. On February 16, 2018, before Dr. Meriwether even had a chance to respond to this letter, Defendant Milliken informed him via e-mail that she had launched a formal investigation against him. A true, accurate, and complete copy of this e-mail is attached to this Complaint as Exhibit 10.

189. Defendant Milliken explained that she was launching this formal investigation because she had received “another complaint from a student in your Political Philosophy class.” Ex. 10 at 1.

190. The student Defendant Milliken referenced was Doe.

191. Defendant Milliken explained that she was launching this formal investigation due to “a potential violation of University Policy 5.01 REV [*i.e.*, Defendants’ *Nondiscrimination Policies*] that addresses unlawful discrimination and harassment.” Ex. 10 at 1.

192. Defendant Milliken referred the investigation to Defendants Johnson and Shoemaker. Ex. 10 at 1.

193. Defendant Milliken then explained that the “potential violation” came in two forms. Ex. 10 at 1.

194. First, Defendant Milliken noted that Dr. Meriwether “continue[d] to address this student differently than others within the class by calling her by her surname while other students are addressed as Ms. ___ or Mr. ___.” Ex. 10 at 1.

195. Second, Defendant Milliken noted that Dr. Meriwether continued to use masculine pronouns when referring to Doe. Ex. 10 at 1.

196. In launching this formal investigation, Defendant Milliken violated several provisions of the *Collective Bargaining Agreement*.

197. The *Collective Bargaining Agreement* specifies that “[f]ormal actions shall be imposed only for just cause.” Ex. 4 at 110.

198. The *Collective Bargaining Agreement* then outlines nine instances that qualify as “just cause” for formal disciplinary action. Ex. 4 at 110–11.

199. None of these nine instances applied to Dr. Meriwether’s expression, and yet Defendant Milliken commenced formal disciplinary proceedings anyway.

200. The *Collective Bargaining Agreement* outlines professors’ academic freedom rights. Ex. 4 at 24.

201. Under the *Collective Bargaining Agreement*, professors’ academic freedom includes “[f]reedom in their classroom when discussing subject matter that is reasonably related to the relevant course material and established curriculum.” Ex. 4 at 24.

202. Many of Dr. Meriwether’s classes, including his Political Philosophy class, naturally touch on controversial issues, such as questions of ethics and human nature. His comments about gender identity are thus reasonably related to his teaching and scholarship and also address matters of public concern.

203. Under the *Collective Bargaining Agreement*, professors’ academic freedom includes the freedom to “[c]hoose . . . pedagogical techniques.” Ex. 4 at 24.

204. Dr. Meriwether’s manner of addressing students is a pedagogical technique designed to foster an atmosphere of seriousness and respect that is vital when discussing such controversial and hotly debated issues as gender identity. It also communicates his own views on these subjects.

205. Under the *Collective Bargaining Agreement*, professors’ academic freedom includes the “[f]reedom to . . . speak freely . . . on educational and curricular matters and on matters of public concern.” Ex. 4 at 24. The issue in question is clearly a matter

of public concern.

206. On February 23, 2018, Dr. Meriwether responded via e-mail to Defendant Milliken's February 13th letter and February 16th e-mail. A true, accurate, and complete copy of this response is attached to this Complaint as Exhibit 11.

207. In his response, Dr. Meriwether noted that he was still evaluating how to respond to the investigation and that he could "ultimately conclude that [he] could not comply with [Defendant Milliken's] directives due to [his] conscience, ethical or religious convictions, or [his] views on free speech." Ex. 11 at 3–4.

208. In addition, Dr. Meriwether reminded Defendant Milliken of his sincerely held religious beliefs as a Christian and explained how those beliefs impacted issues related to gender identity. Ex. 11 at 4.

209. Dr. Meriwether also summarized the accommodation he had proposed and how Defendant Milliken had rejected it. Ex. 11 at 4.

210. Dr. Meriwether then inquired whether he would be allowed to refer to all students by their last names alone and continue to use sex-based pronouns, rather than pronouns reflecting a student's self-asserted gender identity. Ex. 11 at 4.

211. Dr. Meriwether explained that he was not sure this accommodation would be acceptable to him, as it would undermine the educational environment he strived to achieve in his classroom, but he asked if it would comply with University policy. Ex. 11 at 4.

212. On February 26, 2018, Defendant Milliken replied, explaining that under Defendants' *Nondiscrimination Policies*, Dr. Meriwether had two choices: "calling every student in your classes by his/her last name or by his/her first name." Ex. 11 at 2.

213. As Defendant Milliken did not address the use of pronouns, Dr. Meriwether reiterated this question on March 1, 2018. Ex. 11 at 1–2.

214. Specifically, Dr. Meriwether asked: "Would the policy prevent me from using

biologically correct pronouns when referencing other students, as long as I addressed the student in question using first or last name and refrained from using pronouns?” Ex. 11 at 2.

215. On March 12, 2018, Defendant Milliken replied: “Every student needs to be treated the same in all of your classes. In other words, the policy seeks to ensure that what is done for one student is done for all to avoid issues of discrimination. This regards names, pronoun usage, and most any other matter.” Ex. 11 at 1.

216. In sum, Defendant Milliken indicated that Dr. Meriwether would violate Defendants’ *Nondiscrimination Policy* (1) if he referred to Doe using masculine pronouns; or (2) if he stopped using pronouns in reference to Doe but continued to use sex-based pronouns for all other students; or (3) if he referred to transgender students by their name of choice but continued to refer to all other students by their last names and titles (*i.e.*, “Mr.,” “Ms.,” “Miss,” or “Mrs.”).

217. Thus, with respect to names, Defendant Milliken indicated that Dr. Meriwether had only two choices if he wanted to comply with Defendants’ *Nondiscrimination Policies*: (1) stop referring to students by their last names and titles, thereby altering the pedagogical environment in his classroom; or (2) use titles that refer to each student’s self-asserted gender identity, which would require him to violate his conscience and sincerely held religious beliefs.

218. Thus, with respect to pronouns, Defendant Milliken indicated that Dr. Meriwether had only two choices if he wanted to comply with Defendants’ *Nondiscrimination Policies*: (1) stop using pronouns altogether, which is unreasonable and impossible, especially given the Socratic teaching style that he uses; or (2) use pronouns that refer to each student’s self-asserted gender identity, which would require him to violate his conscience and sincerely held religious beliefs.

219. On the same day, Dr. Meriwether sent a letter to the University’s president and Defendant Bauer, asking them to suspend the investigation. A true, accurate,

and complete copy of this letter is attached to this Complaint as Exhibit 12.

220. In this letter, Dr. Meriwether recounted Doe's demands and threatening behavior, his efforts to reach an accommodation with Defendant Milliken, and her refusal to agree to any arrangement that would allow Dr. Meriwether to follow his religious convictions. Ex. 12 at 2–3.

221. Dr. Meriwether also explained how launching this investigation violated the *Collective Bargaining Agreement*, as there was no sufficient basis for the investigation. Ex. 12 at 3.

222. Later that day, Defendant Bauer responded, refusing to suspend the investigation. Ex. 12 at 1.

223. Upon information and belief, Defendant Bauer consulted with the University's president before responding to Dr. Meriwether.

224. Upon information and belief, Defendant Bauer acted at the instruction or with the approval of the University's president when he responded to Dr. Meriwether.

225. On April 12, 2018, Defendant Johnson submitted the results of her investigation to Defendant Milliken. A true, accurate, and complete copy of her investigation report, as updated on May 9, 2018, is attached to this Complaint as Exhibit 13.

226. Defendant Johnson's investigation involved interviewing just four witnesses, including Doe and Dr. Meriwether. Ex. 13 at 1–2.

227. Defendants Johnson and Shoemaker and their staff never interviewed any non-transgender students from Dr. Meriwether's class as part of the investigation so as to get a more disinterested perspective on the environment in that class.

228. Upon information and belief, Defendants Johnson and Shoemaker and their staff interviewed only students that Doe recommended.

229. Defendants Johnson and Shoemaker and their staff never asked Dr. Meriwether to recommend any potential witnesses they could interview.

230. Defendant Johnson concluded that Dr. Meriwether's "disparate treatment has created a hostile environment" for Doe, thereby violating both of Defendants' *Nondiscrimination Policies*. Ex. 13 at 1, 4.

231. Upon information and belief, Defendants Johnson and Shoemaker consulted with Defendant Pierce in conducting their investigation and in preparing Defendant Johnson's investigation report.

232. Upon information and belief, Defendants Johnson and Shoemaker acted at the instruction or with the approval of Defendant Pierce in conducting their investigation and in preparing Defendant Johnson's investigation report.

2. Defendants Formally Charge Dr. Meriwether

233. On April 18, 2018, Defendant Milliken notified Dr. Meriwether that she was pursuing a "formal charge" against him. A true, accurate, and complete copy of Defendant Milliken's charge notice is attached to this Complaint as Exhibit 14.

234. In this charge notice, Defendant Milliken explained to Dr. Meriwether that, according to the investigation, "your disparate treatment of the complainant in your class has caused a hostile environment." Ex. 14 at 1.

235. On April 21, 2018, Dr. Meriwether e-mailed Defendants Shoemaker, Johnson, and Milliken, requesting additional documentation and correcting factual inaccuracies in Defendant Johnson's investigation report. A true, accurate, and complete copy of this e-mail is attached to this Complaint as Exhibit 15.

236. On May 8, 2018, Dr. Meriwether sent Defendant Milliken an e-mail responding to a timeline of events included in Defendant Johnson's investigation report, which he had not received until April 27, 2018. A true, accurate, and complete copy of this e-mail is attached to this Complaint as Exhibit 16.

237. In this e-mail, Dr. Meriwether elaborated further on his beliefs regarding gender identity, reiterated his objection to being forced to communicate a message he does not believe and that conflicts with his religious beliefs, and responded to some

misleading statements in Defendant Milliken's timeline. Ex. 16 at 1.

238. On May 29, 2018, Defendant Milliken issued a report, setting forth her findings after the formal investigation of Dr. Meriwether. A true, accurate, and complete copy of her report is attached to this Complaint as Exhibit 17.

239. In her report, Defendant Milliken concluded that because Dr. Meriwether refused to refer to Doe as a woman, he had violated Defendants' *Nondiscrimination Policies*. See Ex. 17 at 2 ("Because Dr. Meriwether repeatedly refused to change the way he addressed Ms. [Doe] in his class due to his views on transgender people, and because the way he treated Ms. [Doe] was deliberately different than the way he treated others in his class, I found that he effectively created a hostile environment for Ms. [Doe]. This is a direct violation of Policy No. 5.01REV.").

240. Defendant Milliken recommended punishing Dr. Meriwether by issuing a written warning. See Ex. 17 at 2 ("[I]n order to ensure a safe educational experience for all students, I propose the formal action of a written warning being placed in Dr. Meriwether's personnel file.").

241. On June 1, 2018, Dr. Meriwether sent Defendant Bauer an e-mail correcting Defendant Milliken's mischaracterizations of his actions towards Doe. A true, accurate, and complete copy of this e-mail is attached to this Complaint as Exhibit 18.

242. Dr. Meriwether explained to Defendant Bauer that "this whole controversy arose because I was treating [Doe] precisely the same as I treat all other students. Regardless of his gender identity, [Doe] is biologically male, and I referred to him the same way as I refer to all other biologically male students." Ex. 18 at 1.

243. Dr. Meriwether went on to note that he only started to refer to Doe differently in an effort to accommodate Doe's request, that he never treated Doe differently in any other way, and that Doe's "access to educational benefits and opportunities was never jeopardized." Ex. 18 at 1.

244. On June 14, 2018, Defendant Bauer agreed with Defendant Milliken that Dr. Meriwether had violated Defendants' *Nondiscrimination Policies*. A true, accurate, and complete copy of his decision is attached to this Complaint as Exhibit 19.

245. In agreeing with Defendant Milliken, Defendant Bauer approved her recommended disciplinary action and asked her to "provide [him] with a letter of warning that will be placed in [Dr. Meriwether's] personnel file." Ex. 19 at 2.

3. Defendants Sanction Dr. Meriwether & Impose a Speech Code

246. On June 22, 2018, Defendant Milliken issued the written warning to Dr. Meriwether. A true, accurate, and complete copy of her warning is attached to this Complaint as Exhibit 20.

247. Defendant Milliken's warning reiterated that Dr. Meriwether had violated Defendants' *Nondiscrimination Policies*. Ex. 20 at 1.

248. Defendant Milliken warned Dr. Meriwether to change the way he addresses transgender individuals "to avoid further corrective actions." Ex. 20 at 1.

249. On June 25, 2018, Defendant Bauer formally notified Dr. Meriwether of Defendant Milliken's warning via e-mail. A true, accurate, and complete copy of this e-mail is attached to this Complaint as Exhibit 21.

4. Defendants Affirm Their Disciplinary Actions & Speech Code

250. On July 2, 2018, Dr. Meriwether submitted a grievance request to the Union, outlining provisions of the *Collective Bargaining Agreement* that Defendants violated in disciplining him for his expression. A true, accurate, and complete copy of Dr. Meriwether's grievance request is attached to this Complaint as Exhibit 22.

251. During an August 1, 2018, conversation with Dr. Meriwether, Dr. Poirot warned that if additional students filed complaints with the administration, Dr. Meriwether would likely be fired or suspended without pay.

252. On August 16, 2018, the Union submitted a formal grievance on Dr. Meriwether's behalf. A true, accurate, and complete copy of this formal grievance is

attached to this Complaint as Exhibit 23.

253. In this grievance, Dr. Meriwether asked the University to vacate the disciplinary action taken against him and to allow him to continue speaking consistent with his religious beliefs. Ex. 23 at 4.

254. On August 22, 2018, Dr. Poirot and Dr. Meriwether met with Defendant Bauer to discuss the grievance.

255. Defendant Bauer, as provost, was the first official who would review Dr. Meriwether's grievance.

256. At the meeting, Dr. Poirot attempted to explain how Defendants' disciplinary action against Dr. Meriwether imperiled his ability to live consistent with his sincerely held religious convictions, his academic freedom, and his free speech rights. A true, accurate, and complete copy of Dr. Poirot's account of this meeting is attached to this Complaint as Exhibit 24.

257. Defendant Bauer repeatedly interrupted Dr. Poirot, clearly indicating that he had no interest hearing Dr. Meriwether's grievance.

258. When Dr. Poirot outlined the religious beliefs that Dr. Meriwether and his church hold and how Defendants' disciplinary actions would force Dr. Meriwether to violate those teachings, Dr. Poirot noted that Defendant Bauer "openly laughed." Ex. 24 at 1.

259. By laughing, Defendant Bauer displayed open hostility towards Dr. Meriwether and his religious beliefs.

260. During the meeting, Dr. Poirot again inquired as to whether Dr. Meriwether would be complying with Defendants' *Nondiscrimination Policies* if he (1) referred to all students by their self-asserted gender identity and (2) placed a disclaimer in his syllabus, noting that he was doing so under compulsion and setting forth his personal and religious beliefs about gender identity.

261. Defendant Bauer dismissed this approach, indicating that even this would

violate Defendants' *Nondiscrimination Policies*.

262. Defendant Bauer's conduct throughout the meeting was so uncooperative that Dr. Poirot "was not able to present the grievance." Ex. 24 at 2.

263. Sometime after this meeting, Dr. Poirot again warned Dr. Meriwether that he could be fired if he continued to refuse to refer to Doe as female. Thus, he cautioned Dr. Meriwether to change his expression while the grievance process unfolded, saying that otherwise Dr. Meriwether was running an unnecessary financial risk.

264. On September 5, 2018, Defendant Bauer e-mailed Dr. Meriwether stating, "I am denying your grievance." A true, accurate, and complete copy of this e-mail, including the attached decision and rationale, is attached to this Complaint as Exhibit 25.

265. On September 6, 2018, Dr. Meriwether appealed Defendant Bauer's decision to the University's president.

266. Shortly thereafter, the University's president resigned and Defendant Bauer was appointed interim president.

267. As a result, Defendant Bauer would be reviewing as interim president his own decision made as provost.

268. On September 14, 2018, Dr. Poirot and Dr. Meriwether met with Mr. David Zender and Mr. Michael McPhillips, Defendant Bauer's representatives, to discuss the grievance. A true, accurate, and complete copy of Dr. Poirot's notes from this meeting are attached to this Complaint as Exhibit 26.

269. On October 4, 2018, Defendant Bauer issued his decision on Dr. Meriwether's grievance in his role as interim president. A true, accurate, and complete copy of his decision as interim president is attached to this Complaint as Exhibit 27.

270. Defendant Bauer denied Dr. Meriwether's grievance and adopted Mr. Zender's recommended decision. Ex. 27 at 11.

271. Defendant Bauer erroneously claimed that "this is not a hostile environment

claim.” Ex. 27 at 13.

272. In saying this, Defendant Bauer contradicted Defendant Johnson’s investigation report, Ex. 13 at 1, 4; Defendant Milliken’s charge notice, Ex. 14 at 1; and Defendant Milliken’s report outlining her findings after the investigation, Ex. 17 at 2.

273. Defendant Bauer erroneously claimed that Dr. Meriwether “refused to stop singling out [Doe] because of her gender identity.” Ex. 27 at 13.

274. In reality, Dr. Meriwether offered to accommodate Doe by referring to him by whatever name Doe preferred.

275. Dr. Meriwether never singled out Doe for any reason, including his self-asserted gender identity.

276. Defendant Bauer concluded that Dr. Meriwether discriminated against Doe based on gender identity. Ex. 27 at 13.

277. However, Defendant Bauer never explained how Dr. Meriwether’s expression “denie[d] or limit[ed] [Doe’s] ability to obtain the benefits of Shawnee State’s programs or activities.” Ex. 27 at 13.

278. Defendant Bauer concluded again that Dr. Meriwether had violated Defendants’ *Nondiscrimination Policies*. Ex. 27 at 13.

279. Defendant Bauer concluded that he could not grant Dr. Meriwether’s requested religious accommodation because “it is conceivable that SSU employs or may in the future employ faculty members with sincerely held religious beliefs that, e.g., one national origin is superior to another national origin, or one sex is inferior to the other sex.” Ex. 27 at 13.

280. That is, Defendant Bauer dismissed Dr. Meriwether’s request for accommodation of his religious beliefs by equating them with those of hypothetical racists and sexists. Ex. 27 at 13.

281. In so doing, Defendant Bauer displayed open hostility to Defendant

Meriwether's religious beliefs.

282. Defendant Bauer also concluded that Dr. Meriwether would still violate Defendants' *Nondiscrimination Policies* if he were to refer to students by their self-asserted gender identity and include a disclaimer in his syllabus setting forth his personal and religious beliefs on the subject. Ex. 27 at 13.

283. With respect to names, Defendant Milliken had given Dr. Meriwether only two choices if he wanted to comply with Defendants' *Nondiscrimination Policies*, and Defendant Bauer now gave him the same two choices: (1) stop referring to students by their last names and titles, thereby altering the pedagogical environment in his classroom; or (2) use titles that refer to each student's self-asserted gender identity, which would require him to violate his conscience and sincerely held religious beliefs.

284. With respect to pronouns, Defendant Milliken had given Dr. Meriwether only two choices if he wanted to comply with Defendants' *Nondiscrimination Policies*, and Defendant Bauer now gave him the same two choices: (1) stop using pronouns altogether, which is unreasonable and impossible, especially given the Socratic teaching style that he uses; or (2) use pronouns that refer to each student's self-asserted gender identity, which would require him to violate his conscience and sincerely held religious beliefs.

F. Effect of Defendants' Unconstitutional Actions on Dr. Meriwether

285. Defendants' *Nondiscrimination Policies* and their enforcement of those policies burden Dr. Meriwether's constitutional rights for multiple reasons.

286. The warning letter in his personnel file constitutes a formal disciplinary action that has been taken against him. Ex. 4 at 109–10.

287. Multiple individuals familiar with the disciplinary process for faculty at the University have repeatedly warned Dr. Meriwether that he could be fired or suspended without pay if he does not comply with Defendants' *Nondiscrimination Policies*.

288. For example, Dr. Burns told Dr. Meriwether that a warning letter is the first step in the Defendants' disciplinary process, but after that, Defendants do not have to use all other disciplinary actions.

289. Instead, Dr. Burns told Dr. Meriwether that, after issuing a warning letter, Defendants could immediately fire Dr. Meriwether for any subsequent violations.

290. Now that Defendants have placed a warning letter in Dr. Meriwether's personnel file, any further complaint regarding how he communicates on issues related to gender identity could result in his immediate suspension without pay or his termination.

291. Because of this threat, Dr. Meriwether has not discussed issues related to gender identity or transgenderism when he otherwise would have done so.

292. For example, Dr. Meriwether has in the past included a presentation regarding transgenderism and gender identity in his Ethics class.

293. In addition, issues related to gender identity and transgenderism often arise in the class discussion in his Political Philosophy classes.

294. In addition, issues related to gender identity and transgenderism are serious matters of public concern that interest many students. They also lie at the heart of the distinction between modern and premodern modes of thoughts and our deepest political divisions. Thus, they would naturally arise in class discussions in many (if not all) of Dr. Meriwether's classes.

295. In all of these settings, Dr. Meriwether has declined to discuss substantively issues related to gender identity and transgenderism, has steered class discussions to avoid them, and has refused to address these issues when students have raised them.

296. Dr. Meriwether has assiduously avoided these issues because, now that he has a warning letter in his personnel file, discussing these issues could result in his immediate suspension without pay or termination.

297. As a result, Dr. Meriwether cannot address a high profile issue of public concern that has significant philosophical implications (*e.g.*, illustrating how modern society no longer treats the physical body and its purposes and functions as normative for human behavior and examining whether this philosophical shift is well-grounded or beneficial for the individual and society).

298. Last, having a letter of warning in his file will make it difficult, if not impossible, for Dr. Meriwether to obtain a position as an adjunct, professor, instructor, consultant, or administrator at another institution once he retires from the University.

STATEMENTS OF LAW

299. At all times relevant to this Complaint, each and all of the acts and policies alleged herein were attributed to Defendants who acted under color of a statute, regulation, or custom of the State of Ohio (*i.e.*, under color of state law and authority).

300. Defendants knew or should have known that they were violating Dr. Meriwether's constitutional and contractual rights by:

- a. Subjecting Dr. Meriwether to disciplinary action because he spoke in a way that communicated his beliefs regarding gender identity;
- b. Disciplining Dr. Meriwether by placing a warning letter in his personnel file that threatens further disciplinary action if he engages in "any such behaviors" in the future;
- c. Compelling Dr. Meriwether to speak in a way that affirms and recognizes as true the idea that a person can change his or her gender or identify differently than his or her sex;
- d. Prohibiting Dr. Meriwether from living and speaking in a way that is consistent with his religious beliefs and punishing him when he tried to do so;
- e. Refusing to grant Dr. Meriwether a religious accommodation;

f. Disciplining Dr. Meriwether in violation of the *Collective Bargaining Agreement*.

301. The policies and practices that led to the violation of Dr. Meriwether's constitutional and contractual rights remain in full force and effect.

302. Dr. Meriwether is suffering irreparable harm from Defendants' *Nondiscrimination Policies* and the way those policies have been enforced.

303. Dr. Meriwether has no adequate or speedy remedy at law to correct the deprivation of his rights by Defendants.

304. Defendants' actions and policies, as set forth above, do not serve any legitimate or compelling state interest and are not narrowly tailored to serve any such interests.

305. Defendants' *Nondiscrimination Policies* and related practices are not narrowly tailored as applied to Dr. Meriwether because Dr. Meriwether's expression does not implicate any of the legitimate interests Defendants might have.

306. Unless the policies and conduct of Defendants are enjoined, Dr. Meriwether will continue to suffer irreparable injury.

307. Under 42 U.S.C. §§ 1983 and 1988, Dr. Meriwether is entitled to appropriate relief invalidating Defendants' challenged policies and related conduct.

FIRST CAUSE OF ACTION
Violation of Plaintiff's First Amendment Right to Freedom of Speech
Retaliation
(42 U.S.C. § 1983)

308. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1–307 of this Complaint.

309. By punishing and threatening to punish Dr. Meriwether for expressing his views regarding gender identity both in and out of the classroom, Defendants have retaliated and are retaliating against Dr. Meriwether for exercising his First Amendment rights.

310. When Dr. Meriwether communicated his views regarding transgenderism through his choice of titles and pronouns in his interactions with students and in his classroom, he was speaking on a matter of public concern, engaging in speech related to teaching and scholarship, and engaging in expression the First Amendment protects.

311. Dr. Meriwether's interest, as a professor at a public university, in discussing matters of public concern in the context of teaching and scholarship outweighs Defendants' interest in the efficient provision of services.

312. Dr. Meriwether's speech on matters of public concern in the context of teaching and scholarship never prevented Defendants from efficiently providing services to the public (or even threatened to do so).

313. Defendants' *Nondiscrimination Policies*, their enforcement of those policies, and their threatened future enforcement of those policies would deter a person of ordinary firmness from exercising his right to free speech in the future.

314. Defendants have enforced their *Nondiscrimination Policies* against Dr. Meriwether and threaten to do so in the future at least in part because of the views he has expressed on matters of public concern in the context of teaching and scholarship, expression that the First Amendment protects.

315. Defendants subjected Dr. Meriwether to discipline and threaten to do so again in the future due to the content and viewpoint of Dr. Meriwether's speech.

316. Defendants' *Nondiscrimination Policies* and their enforcement of those policies violate Dr. Meriwether's right to free speech as guaranteed by the First Amendment to the United States Constitution.

SECOND CAUSE OF ACTION
Violation of Plaintiff's First Amendment Right to Freedom of Speech
Content & Viewpoint Discrimination
(42 U.S.C. § 1983)

317. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1–307 of this Complaint.

318. By punishing and threatening to punish Dr. Meriwether for expressing his views regarding gender identity both in and out of the classroom, Defendants have engaged in content and/or viewpoint discrimination in violation of the First Amendment.

319. Defendants' *Nondiscrimination Policies* require officials to evaluate the content and viewpoint of faculty expression to determine whether it constitutes discrimination or harassment and whether it creates a hostile environment.

320. Defendants considered the content and viewpoint of Dr. Meriwether's expression when they decided to enforce their *Nondiscrimination Policies* against him and they threaten to do so again if he continues to express his views.

321. Defendants' *Nondiscrimination Policies* confer unbridled discretion upon University officials to discriminate based on content or viewpoint.

322. Defendants exercised this unbridled discretion when they punished Dr. Meriwether for expressing his views regarding gender identity.

323. Defendants' *Nondiscrimination Policies* and their enforcement of those policies are unconstitutionally overbroad because they restrict a significant amount of constitutionally protected speech.

324. The overbreadth of Defendants' *Nondiscrimination Policies* chills the speech of Dr. Meriwether, who seeks to engage in protected expression in his interactions with students on campus and in the classroom.

325. Dr. Meriwether's expression regarding gender identity is protected by the First Amendment.

326. By placing a written warning in his personnel file for allegedly violating their *Nondiscrimination Policies*, Defendants have punished Dr. Meriwether for engaging in expression the First Amendment protects.

327. Defendants' *Nondiscrimination Policies* and their enforcement of those policies violate Dr. Meriwether's right to free speech as guaranteed by the First

Amendment to the United States Constitution.

THIRD CAUSE OF ACTION
Violation of Plaintiff's First Amendment Right to Freedom of Speech
Compelled Speech
(42 U.S.C. § 1983)

328. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1–307 of this Complaint.

329. By punishing and threatening to punish Dr. Meriwether for refusing to communicate a University-mandated ideological message regarding gender identity both in and out of the classroom, Defendants have attempted and are attempting to compel Dr. Meriwether's speech, in violation of his rights under the First Amendment.

330. Defendants' *Nondiscrimination Policies* and their enforcement of those policies compel Dr. Meriwether to communicate messages about gender identity that he does not hold, that he does not wish to communicate, and that conflict with (and for him to violate) his religious beliefs.

331. Defendants' *Nondiscrimination Policies* and their enforcement of those policies violate Dr. Meriwether's right to free speech as guaranteed by the First Amendment to the United States Constitution.

FOURTH CAUSE OF ACTION
Violation of Plaintiff's First Amendment Right to Free Exercise of Religion
(42 U.S.C. § 1983)

332. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1–307 of this Complaint.

333. By punishing and threatening to punish Dr. Meriwether for exercising his sincerely held religious beliefs in the way he discusses issues regarding gender identity both in and out of the classroom, Defendants have violated and are violating his right to free exercise of religion under the First Amendment.

334. Dr. Meriwether's views and expression related to gender identity are motivated by his sincerely held religious beliefs, are avenues through which he

exercises his religious faith, and constitute a central component of his sincerely held religious beliefs.

335. Expressing the University's mandated message regarding gender identity would require Dr. Meriwether to violate his sincerely held religious beliefs.

336. Defendants' *Nondiscrimination Policies* and related practices are neither neutral nor generally applicable but allow Defendants to target religious expression and activities specifically and to express hostility to such expression.

337. Defendants' *Nondiscrimination Policies* and related practices are neither neutral nor generally applicable because they represent a system of individualized assessments.

338. Defendants' *Nondiscrimination Policies* and related practices are underinclusive, prohibiting some expression while leaving other expression equally harmful to the University's asserted interests unprohibited.

339. Defendants' *Nondiscrimination Policies* and related practices burden several of Dr. Meriwether's constitutional rights, including his rights under the First Amendment (*e.g.*, freedom of speech, freedom from retaliation, free exercise of religion), the unconstitutional conditions doctrine, and the Fourteenth Amendment (*e.g.*, due process and equal protection).

340. Defendants violated Dr. Meriwether's right to free exercise of religion when they applied their *Nondiscrimination Policies* to discipline Dr. Meriwether for communicating his views on issues related to gender identity and to compel him to communicate views on those same subjects that violate his religious beliefs, and they continue to do so by threatening to punish him if he continues to communicate his beliefs or if he continues to refuse to communicate views on those same subjects that violate his religious beliefs.

341. Defendants' *Nondiscrimination Policies* and their enforcement of those policies violate Dr. Meriwether's right to free exercise of religion as guaranteed by

the First Amendment to the United States Constitution.

FIFTH CAUSE OF ACTION
Violation of Plaintiffs' Right to be Free from Unconstitutional Conditions
(42 U.S.C. § 1983)

342. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1–307 of this Complaint.

343. By conditioning Dr. Meriwether's status as a professor in good standing at the University (and ultimately his employment at the University) on his willingness to surrender various constitutional rights, Defendants have imposed and are imposing an unconstitutional condition on him in violation of his First Amendment rights.

344. Defendants' *Nondiscrimination Policies* and their enforcement of those policies impose an unconstitutional condition upon faculty members' right to free speech and their receipt of state benefits (*e.g.*, avoiding disciplinary actions up to and including termination, remaining a professor at a public university).

345. Defendants' *Nondiscrimination Policies* and their enforcement of those policies require faculty members to surrender their constitutionally protected rights to freedom of speech, free exercise of religion, due process, and equal protection to avoid disciplinary actions up to and including termination.

346. Defendants enforced their *Nondiscrimination Policies* against Dr. Meriwether, making it clear that he can only avoid further disciplinary action if he surrenders his constitutionally protected rights to freedom of speech, free exercise of religion, due process, and equal protection.

347. Defendants' *Nondiscrimination Policies* and their enforcement of those policies violate Dr. Meriwether's right to be free from unconstitutional conditions.

SIXTH CAUSE OF ACTION
Violation of Plaintiff's Fourteenth Amendment Right to
Due Process of Law
(42 U.S.C. § 1983)

348. Plaintiff repeats and realleges each of the allegations contained in

paragraphs 1–307 of this Complaint.

349. By punishing and threatening to punish Dr. Meriwether under vague and overbroad policies for his expression in and out of the classroom, Defendants have violated and are violating Dr. Meriwether’s right to due process of law under the Fourteenth Amendment.

350. Defendants’ *Nondiscrimination Policies* and related practices are overbroad because they encompass a substantial amount of constitutionally protected speech.

351. Dr. Meriwether’s expression regarding gender identity is protected by the First Amendment.

352. By placing a written warning in his personnel file for allegedly violating their *Nondiscrimination Policies*, Defendants have punished Dr. Meriwether for engaging in expression the First Amendment protects.

353. Defendants’ written warning to Dr. Meriwether, issued under the authority of their *Nondiscrimination Policies*, threatens to punish him if he engages in a wide variety of constitutionally protected expression in the future in violation of Dr. Meriwether’s right to due process of law under the Fourteenth Amendment.

354. Defendants’ *Nondiscrimination Policies* and related practices are unconstitutionally vague because they grant University officials unbridled discretion in deciding what constitutes “gender identity” and “gender identity discrimination,” because they utilize terms that are inherently subjective and elude any precise or objective definition that would be consistent from one official, professor, or student to another, because they are incapable of providing meaningful guidance to Defendants and other University officials, and because they force professors to guess whether expression that the First Amendment protects is in fact allowed on campus.

355. The lack of objective criteria, factors, or standards in Defendants’ *Nondiscrimination Policies* and related practices renders these policies and practices unconstitutionally vague and in violation of Dr. Meriwether’s right to due process of

law under the Fourteenth Amendment.

SEVENTH CAUSE OF ACTION
Violation of Plaintiff's Fourteenth Amendment Right to
Equal Protection of the Law
(42 U.S.C. § 1983)

356. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1–307 of this Complaint.

357. By punishing and threatening to punish Dr. Meriwether for expressing his views regarding gender identity both in and out of the classroom when they would not punish professors who express opposite views on those same subjects, Defendants have violated and are violating Dr. Meriwether's right to equal protection of the law under the Fourteenth Amendment.

358. Dr. Meriwether is similarly situated to other professors at the University.

359. Defendants take no disciplinary action against professors who support and endorse the concepts of gender identity, but they take disciplinary action against professors, like Dr. Meriwether, who refuse to endorse those concepts.

360. Defendants' *Nondiscrimination Policies* have also been applied to discriminate intentionally against Dr. Meriwether's rights to freedom of speech, right to be free from compelled speech, free exercise of religion, right to be free from unconstitutional conditions, and right to due process of law. Thus, discriminatory intent is presumed.

361. Defendants' *Nondiscrimination Policies* and related practices burden Dr. Meriwether's fundamental rights, target a suspect class (*i.e.*, religion), and have no rational basis.

362. Defendants' *Nondiscrimination Policies* and related practices are underinclusive, prohibiting some expression while leaving other expression equally harmful to the University's asserted interests unprohibited.

363. Defendants applied their *Nondiscrimination Policies* and related practices to

Dr. Meriwether in a discriminatory and unequal manner, granting other professors the right to express their views on issues related to gender identity while denying that right to Dr. Meriwether, in violation of Dr. Meriwether's right to equal protection of the law under the Fourteenth Amendment.

EIGHTH CAUSE OF ACTION
Violation of Plaintiff's Rights of Conscience and Free Exercise of Religion
(Ohio Const. Art. I § 7)

364. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1–307 of this Complaint.

365. By punishing and threatening to punish Dr. Meriwether for exercising his sincerely held religious beliefs according to the dictates of his own conscience in the way he discusses issues regarding gender identity both in and out of the classroom, Defendants have violated and are violating his right to free exercise of religion under the Article I § 7 of the Ohio Constitution.

366. The religious convictions Dr. Meriwether expressed and with which he sought to live in accordance are sincerely held religious beliefs.

367. Defendants have infringed on Dr. Meriwether's right to engage freely in his religious practices by enforcing their *Nondiscrimination Policies* to force him to express views on gender identity that conflict with his religious beliefs and that force him to violate his conscience and religious convictions by expressing their preferred views on gender identity.

368. Defendants' *Nondiscrimination Policies* and related practices do not serve any government interests of sufficient magnitude to override Dr. Meriwether's right to live out the dictates of his faith according to his own conscience.

369. Defendants' *Nondiscrimination Policies* and their enforcement of those policies violate Dr. Meriwether's right to free exercise of religion as guaranteed by Article I § 7 of the Ohio Constitution.

NINTH CAUSE OF ACTION
Breach of Contract

370. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1–307 of this Complaint.

371. Under Ohio law, the *Collective Bargaining Agreement* between the Shawnee Education Association and the University represents an enforceable contract between the University and Dr. Meriwether.

372. Throughout his career at the University, Dr. Meriwether had substantially performed his duties under the *Collective Bargaining Agreement* and had not materially breached that *Agreement*.

373. By subjecting Dr. Meriwether to a formal investigation even though none of the contractual conditions were met and then subjecting him to disciplinary actions under their *Nondiscrimination Policies*, Defendants breached the *Collective Bargaining Agreement*.

374. By subjecting Dr. Meriwether to disciplinary action under their *Nondiscrimination Policies* for expression that is protected by academic freedom (as contractually defined) and the First Amendment, Defendants breached the *Collective Bargaining Agreement*.

375. Defendants have no legal excuse for these breaches of the *Collective Bargaining Agreement*.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against Defendants and provide Plaintiff with the following relief:

- A. A declaratory judgment that Defendants’ *Nondiscrimination Policies* and related practices violate Dr. Meriwether’s rights under the First and/or Fourteenth Amendments as applied;
- B. A declaratory judgment that Defendants’ *Nondiscrimination Policies* and related practices, by including “gender identity” as a protected characteristic,

violate Dr. Meriwether's rights under the First and/or Fourteenth Amendment facially;

- C. A preliminary and permanent injunction prohibiting Defendants, their agents, officials, servants, employees, and any other persons acting on their behalf from enforcing Defendants' *Nondiscrimination Policies* to prohibit Dr. Meriwether from expressing his views regarding gender identity or to punish him for expressing those views, including addressing and referring to students based on their biological sex;
- D. A preliminary and permanent injunction ordering Defendants, their agents, officials, servants, employees, and any other persons acting on their behalf to purge Dr. Meriwether's personnel file of any reference to the punishment they imposed on him for expressing his views regarding gender identity, including the June 22, 2018, written warning;
- E. Plaintiff's reasonable attorneys' fees, costs, and other costs and disbursements in this action pursuant to 42 U.S.C. § 1988; and
- F. All other further relief to which Plaintiff may be entitled.

Respectfully submitted this 5th day of February, 2019.⁷

/s/ Travis C. Barham

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DEMAND FOR TRIAL BY JURY

Plaintiff demands a trial by jury for all issues so triable herein.

/s/ Travis C. Barham

TRAVIS C. BARHAM
Attorney for Plaintiffs

⁷ The original version of this document was filed on January 28, 2019.

DECLARATION UNDER PENALTY OF PERJURY

I, NICHOLAS K. MERIWETHER, a citizen of the United States and a resident of the State of Ohio, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that I have read the foregoing, that the foregoing is true and correct to the best of my knowledge (except as to statements made on information and belief, and those I believe to be true and correct), and that the foregoing statements that pertain to me are based on my personal knowledge.

Executed this 28 day of January, 2019, at Portsmouth, Ohio.


NICHOLAS K. MERIWETHER

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of February, 2019, I filed a true and accurate copy of the foregoing document with the Clerk of Court using the CM/ECF system, which automatically sends an electronic notification to the following attorneys of record:

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Respectfully submitted on this the 5th day of February, 2019.

/s/ Travis C. Barham

Travis C. Barham
Attorney for Plaintiffs

Shawnee State University

POLICY TITLE:	NON-DISCRIMINATION/ SEXUAL HARASSMENT POLICY
POLICY NO. :	5.01REV
ADMIN CODE:	3362-5-02
PAGE NO.:	1 OF 2
EFFECTIVE DATE:	10/14/16
NEXT REVIEW DATE:	10/2019
RESPONSIBLE OFFICER(S):	VPFA & VPMSA
APPROVED BY:	BOARD OF TRUSTEES

1.0 POLICY PURPOSE

- 1.1 Shawnee State University is committed to having an educational and working environment for students and employees that is without unlawful or prohibited discrimination and harassment.
- 1.2 This policy serves to ensure that there are University structures and processes in place that prohibit discrimination against any individual because of race, color, genetic information, religion, age, disability, national origin, ancestry, sex, pregnancy, sexual orientation, gender identity, veteran status or military status.

2.0 UNIVERSITY RESOURCES AND PROCESSES

- 2.1 The University will have processes and resources in place to protect students, employees and visitors from prohibited discrimination and harassment and to ensure the following:
 - 2.1.1 Compliance with applicable state and federal laws that address discrimination and harassment;
 - 2.1.2 Complaints of discrimination and harassment are adequately reviewed and resolved; and
 - 2.1.3 Training and education, designed to prevent discrimination and harassment, is conducted throughout the University.
- 2.2 There will be University employees who have the requisite authority and responsibility to ensure compliance with laws and University policies and procedures that address discrimination.
 - 2.2.1 There will be a Title IX Coordinator and deputy coordinators who have overall responsibility for matters addressing sexual harassment and sexual misconduct. The Title IX officers will have responsibility to ensure that the University has clear processes in place for sexual harassment complaints

from students, employees and visitors; and that sexual harassment and sexual misconduct complaints are appropriately investigated and resolved.

2.2.2 There will be at least one Coordinator for disability issues whose responsibility will be to address allegations of discrimination based upon disability, to ensure compliance with applicable state and federal laws and related University policies and procedures, and to review and appropriately respond to accommodation and access requests for students, employees and visitors.

2.3 There will be a system(s) in place to track all reports and complaints of discrimination. An annual report shall be prepared that documents the number and type of discrimination complaints and reports filed with the University within the previous year, along with the resulting resolution or outcome.

3.0 PROCEDURES

3.1 There will be procedures in place, approved by the President, to amplify this policy. Such procedures will include, but not be limited to, the following topics or areas:

3.1.1 Sexual harassment that applies to students, employees and visitors that includes definitions and identifies forms of sexual harassment and misconduct, and addresses consent and consensual relationships, and consideration of the classroom and instructional settings;

3.1.2 Disability procedure(s) that applies to students, employees and visitors and addresses equal access to University programs, activities and services and process(es) for reasonable accommodations;

3.1.3 An investigation and complaint procedure(s) that addresses a clear process for initiating a complaint of prohibited discrimination/ harassment or retaliation that applies to students, employees and visitors, process for notification and reporting, an description of the investigative process, confidentiality, and discipline and other corrective measures.

History

Effective: 09/13/13; Policies 5.02, 5.03 and 5.05 converted to interim procedures

Revised: 10/14/16

Applicable Procedures: [5.01:2 Reporting and Investigating Sexual Assault, Sexual Misconduct & Other Forms of Discrimination](#)
[5.01:5 Accommodation for Employees with Disabilities](#)
[5.01:6 Accommodation for Students with Disabilities](#)

PROCEDURE TITLE:	REPORTING & INVESTIGATING SEXUAL ASSAULT, SEXUAL MISCONDUCT & OTHER FORMS OF DISCRIMINATION
PROCEDURE NO.:	5.01:2REV
RELATED POLICY:	5.01REV
PAGE NO.:	1 OF 16
RESPONSIBLE ADMINISTRATOR(S):	TITLE IX COORDINATOR, DEAN OF STUDENTS, HR DIRECTOR
EFFECTIVE DATE:	10/14/16
NEXT REVIEW DATE:	10/2019
APPROVED BY:	PRESIDENT

1.0 INTRODUCTION AND PURPOSE STATEMENT

- 1.1 This procedure serves to implement the investigation and complaint provisions of Policy 5.01, Non-Discrimination/Sexual Harassment, by identifying University pathways for students, employees and campus visitors to report sexual violence, sexual misconduct (sexual harassment), other unlawful discrimination, and retaliation, and to ensure that all discrimination complaints received by the University are reviewed and responded to promptly and in a fair and equitable manner.
- 1.2 This procedure further serves to provide additional focus on sexual misconduct and to ensure compliance with laws that serve to prevent sexual violence, including the Jeanne Clery Act and the Violence Against Women Reauthorization Act.
- 1.3 The terms “Complainant” and “Respondent” are used throughout this procedure. These terms are defined in Section 18, Definitions, along with terminology associated with sex and gender discrimination.

2.0 JURISDICTION AND APPLICATION

- 2.1 This procedure applies to complaints of sexual misconduct and other prohibited discrimination that take place at the following locations, events and circumstances:
 - 2.1.1 On property that is owned, leased or managed by the University, including student housing and athletic fields.

- 2.1.2 At academic and non-academic University-sponsored events, and activities sponsored or conducted by student organizations.
- 2.1.3 That occur off-campus when the Title IX Coordinator or other administrator responsible for this procedure determines that the alleged off-campus conduct could reasonably create a hostile environment or be detrimental to the University.

2.2 This procedure applies to all aspects of the University's programs and operations and applies to all employees, students, visitors, agents and volunteers.

3.0 EMPLOYEE DUTY TO REPORT

3.1 All University employees, except those exempted by legal privilege of confidentiality, such as University counselors, have an obligation under Ohio law to report incidents of a known sexual or other felonious assault to Public Safety or other law enforcement authority immediately.

3.2 Mandatory Reporters. The following University employees by virtue of their position are considered "mandatory reporters" and have an obligation to report a violation of the Non-Discrimination/Harassment policy when they become aware of information that would lead a reasonable person to believe that prohibited discrimination may have occurred involving anyone covered under this procedure:

3.2.1 Human Resources professionals

3.2.2 Student Affairs professionals, and para-professionals (resident advisors)

3.2.3 Supervisors

3.2.4 Academic department chairs, program directors, program coordinators, clinical coordinators and developmental directors

3.2.5 Faculty members, including adjuncts

3.2.6 Athletics coaches, assistant coaches, and trainers

3.2.7 Public Safety personnel

3.3 Any person obligated to report under this section and who fails to report or take appropriate action, is subject to discipline.

3.4 Any other person with knowledge or belief that sexual misconduct or other prohibited discrimination has occurred should report the alleged acts immediately

to a University official identified in Section 5, Reporting Pathways, of this procedure.

3.5 The following employees are exempt from reporting:

3.5.1 University employees who serve as counselors in the University's Counseling and Psychological Services; and

3.5.2 University employees in the SSU Health Clinic who have a professional license requiring confidentiality or are supervised by a person with such professional license are exempt from the duty to report.

4.0 FALSE ALLEGATIONS

4.1 It is a violation to knowingly make a false allegation or report of sexual misconduct, other discrimination or retaliation. Any employee or student found to knowingly or recklessly have made a false report or allegation is subject to discipline.

4.2 A University finding that sexual misconduct or other prohibited discrimination did not occur or that there was a lack of sufficient evidence to prove a claim of sexual misconduct/discrimination does not necessarily mean that a false allegation or report has been made.

5.0 REPORTING PATHWAYS

5.1 Any individual, student, employee or contractor or other campus visitor who has experienced, witnessed, or has been made aware of an incident of sexual misconduct/harassment, unwelcome sexual behavior, discrimination or retaliation, is encouraged to report it, even if the individual is uncertain whether discrimination, harassment or retaliation has occurred. Any victim, witness or other person, who wishes to consult with someone about an incident without making an official complaint may also contact a University official identified in the Reporting Pathways section of this procedure.

5.2 Reports of sexual misconduct/harassment, other discrimination and retaliation may be through the University's Online Complaint Form <http://www.shawnee.edu/offices/title-IX/complaint.aspx>

Reports may also be directed to any of the below-identified University administrators or officials:

5.2.1 Sexual and Non-sexual Assault, and other crimes of violence

Individuals who experience or witness incidents that involve sexual assault, physical assault, or other violence or threatening behavior

should immediately contact law enforcement. The SSU Department of Public Safety should be contacted for criminal incidents that occur at a University-sanctioned event or on University-owned, leased or managed property, including student housing. The Department of Public Safety can be reached at by calling 740-351-3232. You may also call 911.

5.2.2 Sexual Misconduct

Any person (student, employee, contractor or visitor) may report a violation of sexual misconduct to the Title IX Coordinator or any Deputy Title IX Coordinator. For contact information see:

<http://www.shawnee.edu/offices/title-IX/coordinator.aspx>

5.2.3 Other Forms of Discrimination

5.2.3.1 Students may report any discrimination violation to the Director of Housing and Residence Life or Dean of Students. For contact information see:
<http://www.shawnee.edu/offices/dean-students/>

5.2.3.2 Employees may report any discrimination violation to the Director of Human Resources, a supervisor or higher ranking administrator. For contact information see:
<http://www.shawnee.edu/offices/human-resources/compliance.aspx#eeo>

5.2.3.3 Campus visitors may report a violation to the Director of Human Resources. For contact information see:
<http://www.shawnee.edu/offices/human-resources/compliance.aspx#eeo>

5.3 Making a report to one of the above listed University offices does not preclude an individual from also filing a complaint with an external agency, such as the Ohio Civil Rights Commission (OCRC), the Equal Employment Opportunity Commission (EEOC), or the Office for Civil Rights in the U.S. Department of Education (OCR). Nor does it extend time limits with those agencies. Information regarding filing charges with an outside agency may be obtained by contacting the agency directly or from Human Resources.

5.4 Anonymous Complaints and Requests for Anonymity

5.4.1 Anonymous complaints will be accepted, however, the University's ability to fully and effectively investigate may be limited.

5.4.2 In situations where a complainant requests anonymity or declines to participate in an investigation, the University will honor that request, if it is possible to do so while also protecting the health and safety of the

complainant and the University community. In such circumstances, the University may take other appropriate steps designed to eliminate the reported conduct, prevent its recurrence, and remedy its effects on the complainant and the University community.

- 5.4.3 In all circumstances, a complainant has a right not to participate in an investigation.

6.0 CONFIDENTIALITY AND PRIVACY

In order to protect all parties, every effort will be made to handle the matter throughout the investigative process as discreetly as possible, but it is not possible to guarantee absolute confidentiality. Information received during the course of the investigation will be treated as confidential, except to the extent it is necessary to disclose information in the investigation process or when required by law.

7.0 RETALIATION

The University will not tolerate retaliation in any form against any person who makes an allegation, reports, serves as a witness, assists a complainant or participates in the University's investigation. Any employee or student determined to have committed retaliation, is subject to discipline in accordance with the applicable University process. Any visitor found to have retaliated is subject to a campus ban and other available legal remedies.

8.0 ROMANTIC AND SEXUAL RELATIONSHIPS IN SUPERVISORY AND INSTRUCTIONAL SETTINGS

- 8.1 Consensual romantic or sexual relationships in which one party retains a direct supervisory or evaluative role over the other party are unethical, create a risk for real or perceived coercion, and are expressly a violation of this policy. Furthermore, the possibility of a future amorous relationship may distort the present instructional or advising relationship.
- 8.2 Therefore, persons with direct supervisory, evaluative, grading, coaching, counseling, or academic advising responsibilities who are involved in such relationships must bring those relationships to the attention of their supervisor. This will likely result in the necessity to remove the employee from the supervisory, evaluative, grading, or academic advising responsibilities.
- 8.3 Shawnee State University does not intrude upon private choices regarding personal relationships when these relationships do not violate the policies of the University, cause harm to the safety and wellbeing of members of campus community, or increase the risk of harm to the safety and wellbeing of members of campus community.

9.0 CLASSROOM AND INSTRUCTIONAL SETTINGS

The classroom and other instructional setting may provide special circumstances since academic freedom protects the expression of ideas, even if controversial or offensive. However, conduct will not be exempt merely because it occurs in an instructional setting. The investigation relating to alleged offensive conduct will consider the legitimate pedagogical context and appropriate deference will be afforded to the presentation or discussion in an instructional setting of sexual topics that are mature, controversial, graphic or explicit and not considered sexual harassment, even if some persons find these topics offensive.

10.0 INTERIM MEASURES

10.1 Upon receipt of a report of a violation of the Non-Discrimination/Sexual Harassment Policy, the University will work with the complainant to take or identify measures for support in order to ensure equal access to the University's education and employment programs and activities. Such support may be available before the final outcome of the investigation and may even be made without a formal investigation.

10.2 Student Interim measures include, but are not limited to:

- 10.2.1 No contact order
- 10.2.2 Change in housing assignment
- 10.2.3 Availability of off-campus resources
- 10.2.4 Counseling
- 10.2.5 Health services
- 10.2.6 Safety resources, including safety escort service
- 10.2.7 Academic support
- 10.2.8 Change in work or class schedule and/or location

10.3 Employee Interim measures include, but are not limited to:

- 10.3.1 No contact order
- 10.3.2 Availability of off-campus resources
- 10.3.3 Employee Assistance Program (EAP)
- 10.3.4 Safety resources, including safety escort service
- 10.3.5 Change in work schedule and/or location

11.0 INFORMAL RESOLUTION

- 11.1 An informal process to resolve a sexual misconduct/discrimination complaint may be appropriate in some circumstance when all parties agree. Informal or early resolution is encouraged when the parties desire to resolve the situation cooperatively and/or when a formal resolution is not likely to yield a satisfactory outcome. Participation in the informal resolution process is voluntary.
- 11.2 The University will not offer the informal process in cases of sexual violence or felonious assault.
- 11.3 If the University deems the matter appropriate for informal resolution, a University conduct officer (for students) or designated administrator will work with the parties towards a mutually agreed upon resolution.
 - 11.3.1 The process may include an inquiry into the facts, informal discussion with the parties, mediation, and/or referral to counseling.
 - 11.3.2 The resolution may include educational and training programs for either or both parties and specific remedies for the individual harmed by the offense.
 - 11.3.3 Any party may end the early resolution process at any time and may choose to either begin the formal complaint process or to not further pursue the matter.

12.0 UNIVERSITY OFFICES RESPONSIBLE FOR CONDUCTING DISCRIMINATION INVESTIGATIONS

The University will investigate all reports of sexual misconduct and discrimination. Reports of sexual misconduct or other discrimination will be assessed and investigated by the following offices:

12.1 Sexual Misconduct.

The Title IX Coordinator or assigned deputy is responsible for the assessment and investigation of all reports of sexual misconduct. The Title IX Coordinator is responsible for monitoring all sexual misconduct investigations.

12.2 Other Discrimination

12.2.1 Reports made against a student will be assessed and investigated by the Director of Housing and Residence Life or Student Affairs Conduct Officer. The Director of Housing and Residence Life is also responsible for monitoring the investigation.

12.2.2 Reports made against an employee will be assessed and investigated by the Director of Human Resources or designee.

12.2.3 Reports made against an outside vendor, contractor or other visitor will be assessed and investigated by Public Safety or Human Resources.

13.0 COMPLAINT ASSESSMENT

13.1 In determining whether to pursue a formal investigation, an assessment will be made by the responsible official identified in Section 12 to determine whether the allegations are sufficiently specific and credible and what office(s) should be involved in the investigatory process.

13.2 The assessment will typically include a meeting with the complainant to clarify the complaint. Such meeting may also be an opportunity to assess whether the matter is appropriate for an informal resolution. (See Section 11, Informal Resolution.)

14.0 INVESTIGATION PROCESS

14.1 General Approach and Information

14.1.1 All parties will be informed of the investigative process and allegations being investigated.

14.1.2 The investigation generally will include interviews with the parties, interviews with other witnesses as determined by the investigator, and a review of relevant documents.

14.1.3 In cases of alleged sexual assault, relationship violence, or stalking, parties will be given timely and equal access to information that will be used during disciplinary meetings and hearings. In cases of non-violent sexual misconduct and other forms of discrimination, the investigator may, if deemed appropriate, equitably share information with all parties.

14.2 Interfering with an Investigation

14.2.1 Any party, witness, or other individual who interferes with a University investigation will be in violation of Policy 5.01 and this procedure, and is subject to discipline in accordance with the applicable University process. Interfering with an investigation includes, but is not limited to, the following:

14.2.1.1 Falsification, distortion, and/or misrepresentation of information at any point during the investigation or resolution process;

14.2.1.2 Attempting to discourage an individual's participation in the investigation or resolution process;

14.2.1.3 Attempting to influence the impartiality of an investigator or decision-maker.

14.3 Support Person.

Parties may have one individual (example: friend, family member, union representative or student ombudsman) present during any investigation meeting, student hearing, or other disciplinary proceeding that the party is noticed to attend. The support person does not serve as a spokesperson and may not unreasonably interject or interfere during any interview, meeting or hearing. If a support person is determined to be unreasonably interfering with the meeting or proceeding, that individual may be asked to leave.

14.4 Standard of Review.

The investigator and decision-maker will apply the "preponderance of evidence" standard to determine whether a violation of this policy has occurred. Therefore, if a violation of Policy 5.01, Non-Discrimination/Sexual Harassment, is found, the behavior is more likely than not to have occurred.

14.5 Investigation Timeframe.

14.5.1 A typical investigation will take approximately 60 calendar days following receipt of the complaint. This will vary depending on the complexity of the investigation and the severity and extent of the alleged discriminatory violation.

14.5.2 The process may also be extended if necessary due to holidays and academic breaks, illness, and unavailability of parties or witnesses.

15.0 INVESTIGATIVE FINDINGS

The investigator will report to the decision-making administrator of the investigative finding and may, if advised by the decision-making administrator, include recommended corrective actions. If the respondent is a student, the final report will be directed to the Dean of Students. If the respondent is an employee, the final report will be directed to the appropriate department or administrator responsible for the supervision and discipline of the employee. A written summary report will be provided to the parties.

16.0 RESOLUTION, CORRECTIVE ACTION AND OTHER REMEDIES

16.1 If the investigative report concludes that no violation of the discrimination policy occurred, the disciplinary process will not be initiated, no corrective action will be taken and the parties will be notified in writing.

16.2 If the investigative report concludes that a violation may have or has likely occurred, the matter will follow a University disciplinary review process described below. Corrective actions may include formal reprimand, suspension and termination.

16.2.1 If respondent is a University employee:

16.2.1.1 Full-time regular faculty member. The disciplinary review process for a full time regular faculty member is described in the article titled “Complaint Resolution and Disciplinary Process” in the collective bargaining agreement between the University and the Shawnee Education Association (SEA). The matter will be reviewed by the College Dean. This process provides a pathway for appeal.

Link to collective bargaining agreement:

<http://www.shawnee.edu/offices/human-resources/media/SEA-Contract.pdf>

16.2.1.2 Administrative and Administrative Technical Support Staff (ATSS), which includes managerial, supervisory, administrative and Public Safety employees, are subject to SSU Policy 4.51, which addresses “corrective action.” The matter will be reviewed by either the Vice President for the employee’s division or other senior level administrator.

Link to University policy:

<http://www.shawnee.edu/leadership/policies/media/policy-451rev.pdf>

16.2.1.3 Hourly employees (non-administrative). The disciplinary review process for full-time and regular part-time hourly employees is described in the article titled “Discipline” in the collective bargaining agreement between the University and the Communications Workers of America (CWA). The matter will be reviewed by either the Vice President for the employee’s division or other senior level administrator.

Link: <http://www.shawnee.edu/offices/human-resources/media/CWA-Contract-2013-2016.pdf>

16.2.1.4 Security officers. The disciplinary review process for security officers is addressed in Policy 4.85, Corrective Action. Link: <http://www.shawnee.edu/leadership/policies/media/policy-485.pdf>

16.2.2 If the respondent is a student, the judicial hearing process in the Student Conduct Code will be followed. Potential sanctions under the Student Conduct Code include official warnings, remedial sanctions, disciplinary probation, deferred suspension, suspension, dismissal, and other educational sanctions deemed appropriate. The Conduct Code provides a pathway for an appeal.

<http://www.shawnee.edu/offices/dean-students/media/student-conduct-code.pdf>

16.2.3 When the respondent is not affiliated with the University, the recommendations will be implemented by the appropriate office. The University response may include a permanent ban from campus.

16.3 In all cases of alleged violation of the policy, the respondent student or employee will be informed in writing of the finding and any recommendation for sanctions or corrective action. The complainant will be informed in writing of the finding, any actions taken to resolve the complaint that are directly related to the complainant, and any disciplinary action or sanction imposed when the complainant needs to be aware of the sanction for it to be fully effective (e.g., restrictions on communication or contact with the complainant).

16.4 In cases of sexual assault, relationship violence, or stalking, parties will receive notice of findings simultaneously, in writing, including notice of all sanctions or corrective actions imposed.

17.0 OTHER REMEDIES

When the University makes a finding of a policy violation it will take steps, whether individual or systemic, to stop the alleged sexual misconduct or other discrimination, prevent its recurrence, eliminate any hostile environment, and remedy the discriminatory effects on the complainant and others, as appropriate.

18.0 DEFINITIONS

18.1 Complainant The individual who files a report or on whose behalf a report is filed.

18.2 Respondent The individual against whom a report has been filed.

- 18.3 Sex and Gender Based Discrimination Negative or adverse treatment based on sex (including sexual harassment, sexual violence, sexual misconduct, relationship violence (domestic violence or dating violence) or stalking), gender, gender identity, sexual orientation, or pregnancy, and the treatment denies or limits the individual's ability to obtain the benefits of Shawnee State's programs or activities.
- 18.4 Gender Identity A person's innermost concept of self as male or female or both or neither—how individuals perceive themselves and what they call themselves. One's gender identity can be the same or different than the sex assigned at birth.
- 18.5 Sexual Orientation A person's sexual identity in relation to the gender to which they are attracted; the fact of being heterosexual, homosexual, or bisexual.
- 18.6 Sexual Harassment
- 18.6.1 Sexual harassment includes sexual advances, requests for sexual favors, and other physical or verbal conduct of a sexual nature that is unwelcome and sufficiently severe or pervasive from both a subjective (the complainant's) and an objective (reasonable person's) viewpoint.
- 18.6.2 Sexual harassment can take two forms - quid pro quo or hostile environment:
- 18.6.2.1 Quid pro quo sexual harassment exists when:
- 18.6.2.1.1 There are unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature; and
- 18.6.2.1.2 Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic status; or
- 18.6.2.1.3 Submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions adversely affecting such individual.
- 18.6.2.2 Hostile environment in the employment context includes any situation in which there is harassing conduct that is sufficiently severe, persistent, or pervasive that it unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment; hostile environment in the education context includes any situation in

which there is harassing conduct that limits, interferes with or denies educational benefits or opportunities, from both a subjective (the complainant's) and an objective (reasonable person's) viewpoint. The determination of whether an environment is "hostile" is based on a totality of circumstances. These circumstances may include:

- 18.6.2.2.1 The degree to which the conduct interfered with complainant's educational or work performance;
- 18.6.2.2.2 The type, frequency, and duration of the conduct;
- 18.6.2.2.3 The identity of and relationship between the accused and the complainant(s);
- 18.6.2.2.4 The number of individuals involved;
- 18.6.2.2.5 The age and sex of the accused and the complainant(s);
- 18.6.2.2.6 The location of the incident(s) and the context in which it occurred;
- 18.6.2.2.7 The nature and severity of the conduct;
- 18.6.2.2.8 Whether the conduct was physically threatening;
- 18.6.2.2.9 Whether the conduct was humiliating;
- 18.6.2.2.10 The effect of the conduct on the complainant's mental or emotional state;
- 18.6.2.2.11 Whether the conduct arose in the context of other discriminatory conduct;
- 18.6.2.2.12 Whether the speech or conduct deserves the protections of academic freedom or the first amendment.

18.6.3 A single or isolated incident of sexual harassment (e.g., rape) may be severe enough to create a hostile environment. All such acts of sexual harassment are forms of sexual misconduct covered under this policy.

18.7 Sexual Misconduct is conduct of a sexual nature or conduct based on sex or gender that is non-consensual or has the effect of threatening, intimidating, or coercing a person.

- 18.8 Sexual Violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the person's use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability. A number of different acts fall into the category of sexual violence, including: rape, sexual assault, and sexual coercion. All such acts of sexual violence are forms of sexual harassment covered under Title IX. Gender-based violence may be directed at a person because of the person's gender, gender identity or perceived gender/gender identity.
- 18.9 Sexual Assault is any type of sexual contact or behavior that meets the definition of non-consensual sexual intercourse or of non-consensual sexual contact.
- 18.9.1 Non-consensual sexual contact is any intentional sexual touching, however slight, with any body part or object, by any individual upon another individual that is without consent and/or by force or coercion.
- 18.9.2 Sexual contact includes: intentional contact with the breasts, buttocks, groin, or genitals, or touching another with any of these body parts or object, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth, or other orifice. All such acts of non-consensual sexual contact are forms of sexual assault, and therefore sexual misconduct, covered under this policy.
- 18.9.3 Non-consensual sexual intercourse is any sexual penetration, however slight, with any body part or object, by any individual upon another individual that is without consent and/or by force or coercion.
- 18.9.4 Sexual penetration includes: vaginal penetration by a penis, object, tongue or finger; anal penetration by a penis, object, tongue, or finger; and oral copulation (mouth to genital contact or genital to mouth contact); no matter how slight the penetration or contact. All such acts of non-consensual sexual intercourse are forms of sexual assault, and therefore sexual misconduct, covered under this policy.
- 18.10 Relationship Violence includes dating violence and domestic violence. All such acts of relationship violence are forms of sexual misconduct covered under this procedure.
- 18.10.1 Domestic Violence is that which would meet the definition of a felony or misdemeanor crime of violence committed by the complainant's current or former spouse or intimate partner, a person with whom the complainant shares a child in common, a person who is or has cohabitated with the complainant as a spouse or intimate partner, or individual similarly situated to a spouse under domestic or family

violence law, or anyone else protected under the domestic or family violence law of the jurisdiction in which the offense occurred. An individual need not be charged with or convicted of a criminal offense to be found responsible for domestic violence pursuant to this policy.

- 18.10.2 Dating violence is violence or threat of violence by an individual who has been in a social relationship of a romantic or intimate nature with the complainant. Whether there was such relationship will be determined based on the reporting party's statement and with consideration of the length and type of relationship, and the frequency of interaction of the persons involved in the relationship.
- 18.11 Consent is permission that is clear, knowing, voluntary, and expressed prior to engaging in and during an act. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity.
- 18.11.1 Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
- 18.11.2 Consent may be withdrawn at any time.
- 18.11.3 Previous relationships or prior consent cannot imply consent to future sexual acts; this includes "blanket" consent (i.e., permission in advance for any/all actions at a later time/place).
- 18.11.4 Consent cannot be given by an individual who one knows to be – or based on the circumstances should reasonably have known to be – substantially impaired (e.g., by alcohol or other drug use, unconsciousness or blackout, etc.).
- 18.11.5 Substantial impairment is a state when an individual cannot make rational, reasonable decisions because she/he lacks the capacity to give knowing consent (e.g., to understand the "who, what, when, where, why, or how" of their sexual interaction).
- 18.11.6 This policy also covers individuals whose substantial impairment results from other physical or mental conditions including mental disability, sleep, involuntary physical restraint, or from the consumption of alcohol or other drugs.
- 18.11.7 Being impaired by alcohol or other drugs will never function as a defense for any behavior that violates this policy.

18.11.8 An individual cannot consent who has been coerced, including being compelled by force, threat of force, or deception; who is unaware that the act is being committed; or who is coerced by a supervisory or disciplinary authority.

18.12 Stalking is a course of conduct directed at a specific individual that would cause a reasonable person under similar circumstances and with similar identities to the complainant to fear for her, his, or others' safety, or to suffer substantial emotional distress. A course of conduct includes two or more acts, including but not limited to, those in which the alleged perpetrator directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about the complainant, or interferes with the complainant's property.

History

Effective: 01/19/91

Revised: 10/14/16, Merges Procedures 5.01:2 and 5.01:4

08/01/14, Replaced Interim Procedure 5.01:2 Eff. 09/13/13

09/13/13, Replaced Interim Procedure 5.01:2 Eff. 01/10/16

01/10/06, Policy 5.03, Unlawful and Prohibited Discrimination, Converted to Interim Procedure 5.01:2

[DIRECTORY \(/INFORMATION/DIRECTORY.ASPX\)](/information/directory.aspx)[EMAIL \(/OFFICES/INFORMATION-TECHNOLOGY-SERVICES/EMAIL-ACCESS.ASPX\)](/offices/information-technology-services/email-access.aspx)[MYSSU \(HTTPS://MYSSU.SHAWNEE.EDU/\)](https://myssu.shawnee.edu/)[OFFICES \(/OFFICES/\)](/offices/)[ACCESSIBILITY \(/OFFICES/ACCESSIBILITY-SERVICES/\)](/offices/accessibility-services/)**Menu****Search****Apply Now**[\(/offices/admission/apply.aspx\)](/offices/admission/apply.aspx)[About \(/information/index.aspx\)](/information/index.aspx)[Admission & Financial Aid \(/offices/admission/index.aspx\)](/offices/admission/index.aspx)[Academics \(/academics/\)](/academics/)[Campus Life \(/offices/student-life/\)](/offices/student-life/)[Athletics \(http://www.ssubears.com/\)](http://www.ssubears.com/)[Support SSU \(https://givetossu.com\)](https://givetossu.com)[Career Resources \(/offices/human-resources/\)](/offices/human-resources/)**SECTION MENU**

LGBTQIA

The Campus Counseling Center at Shawnee State University strives to provide a safe space for student exploration of gender identity and/or sexual orientation. Come see us, we're listening.

If you are in need of urgent support, please call one of the following LGBTQ specific support lines:

[Trans Lifeline \(http://www.translifeline.org/\)](http://www.translifeline.org/): 877-565-8860

Trans Lifeline is a 501(c)3 non-profit dedicated to the well-being of transgender people. The hotline is staffed by transgender people for transgender people. Trans Lifeline volunteers are ready to respond to whatever support needs members of our community might have.

Trevor Project (<http://www.thetrevorproject.org/>): 866-488-7386

Founded in 1998 by the creators of the Academy Award®-winning short film TREVOR, The Trevor Project is the leading national organization providing crisis intervention and suicide prevention services to lesbian, gay, bisexual, transgender and questioning (LGBTQ) young people ages 13-24.

Bravo (<http://www.bravo-ohio.org/>): 866-862-7286

Bravo is your link to survivor advocacy and assistance regarding hate crimes, discrimination, domestic violence, and sexual assault. BRAVO is a founding member of the National Coalition of Anti-Violence Programs (NCAVP).

For information related to LGBTQIA groups/organizations available on campus, contact the Student Government Association at sga@mymail.shawnee.edu or 740-351-3320.

Further reading:

Trans-Kin: A Guide for Family & Friends of Transgender People, Eleanor A. Hubbard and Cameron T. Whitley (Eds.). Bolder Press, 2012.

Trans Bodies, Trans Selves: A Resource for the Transgender Community, Laura Erickson-Schroth (Ed.). Oxford University Press, 2014.

Below is a list of LGBTQIA terminology to improve communication on campus amongst students, staff and faculty. It is not intended to generalize and/or label others based on gender identity and sexual orientation expression:

Ally – Someone who confronts heterosexism, homophobia, biphobia, transphobia, heterosexual and genderstraight privilege in themselves and others; shows a concern for the well-being of LGBTQIA people; and believes that heterosexism, homophobia, biphobia, and transphobia are social justice issues.

Asexual – A sexual orientation where a person does not experience sexual attraction or desire to partner for the purposes of sexual stimulation. Also refers to a spectrum of sexual orientations where a person may be disinclined towards sexual behavior or sexual partnering.

Biphobia – The fear, discrimination of, or hatred, of bisexual people. Biphobia can be seen within the LGBTQIA community, as well as in general society.

Bisexual – A person emotionally, physically, and/or sexually attracted to people that are similar and/or different from themselves. This attraction does not have to be equally split among sexes or genders across the spectrum.

Cisgender – An individual whose gender identity matches the sex they were assigned at birth.

Closeted (in the closet) – An LGBTQIA person who does not publicly or privately profess one's gender identity or sexual orientation by choice or out of fear of discrimination and/or harm. There are varying degrees of being in the closet; for example, a person can be out in their social life but in the closet at work or with family.

Coming out – The process by which an LGBTQIA person publicly or privately professes one's gender identity or sexual orientation. This process is never a one-and-done; it is a lifelong process.

Cross-dresser – A person who, regardless of motivation, wears clothes or makeup that are considered by the culture to be appropriate for another gender (preferred term to the pejorative term transvestite).

Discrimination – Differential treatment that favors one individual or group over another based on prejudice.

Drag or In Drag – The performance of one or multiple genders theatrically.

Drag King – A person who performs masculinity theatrically.

Drag Queen – A person who performs femininity theatrically.

FTM or F2M – Abbreviation for female-to-male transgender person (Some reject this terminology, affirming that they have always been male or female and are only making the identity visible. Others feel that such language reinforces a binary sex/gender system).

Gender – A social combination of identity, expression, and social elements all related to masculinity and femininity. Includes gender identity (self-identification), gender expression (self-expression), social gender (social expectations), gender roles (socialized actions), and gender attribution (social perception).

Gender Binary – The idea that there are only two genders – men and women – and that a person must be strictly gendered as either/or.

Gender Expression – How one chooses to express one's gender identity, through gender cues such as hairstyle, gait, vocal inflection, clothing, makeup, and accessories.

Gender Identity – A term that describes how a person identifies their gender. One's gender identity may be different than social norms and/or stereotypes of the sex they were assigned at birth. There are a wide range of gender identities, including man, woman, transgender, genderqueer, etc. Since gender identity is internal, one's gender identity is not necessarily visible to others.

Gender Variant – A person who either by nature or by choice does not conform to gender-based expectations of society (e.g. transgender, intersex, genderqueer, gender non-conforming (GNC) cross-dresser, etc.).

Genderqueer – A gender variant/gender non-conforming (GNC) person whose gender identity is neither woman or man, both woman and man, somewhere in between, or is some combination of genders.

Heterosexism – The individual and societal assumption that everyone is heterosexual –or should be. That heterosexuality is the only 'normal' right and moral way to be. Therefore, anyone of a different sexual orientation is 'abnormal,' wrong, and immoral. The element of institutional power to support these attitudes, actions, and/or practices differentiates this as oppression from other forms of prejudice and discrimination.

Heterosexual Privilege – Those benefits derived automatically by being heterosexual that are denied to people of other sexual orientations.

Homophobia – The irrational fear, hatred, and/or pity of lesbian and/or gay individuals, culture, or any behavior or belief that does not conform to rigid gender role stereotypes. It is the fear that enforces sexism and heterosexism and other forms of oppression.

Intersex – A biological variance in sex. A person whose combination of chromosomes, hormones, and internal/external sex organs does not meet the medical standard for either female or male (preferred term to the pejorative term of Hermaphrodite).

MTF or M2F – Abbreviation for male-to-female transgender (Some reject this terminology, affirming that they have always been male or female and are only making the identity visible. Others feel that such language reinforces a binary sex/gender system).

Oppression – The systematic exploitation of one social group by another for its own benefit. It involves institutional control, ideological domination, and the declaration of the dominant group's culture on the oppressed.

Pansexual – A person emotionally, physically, and/or sexually attracted to all or many gender identities. Individuals may reject the binary notion of gender or they are attracted to individuals regardless of gender.

Prejudice – A conscious or unconscious negative belief about a whole group of people and its individual members.

Queer – An umbrella term some LGBTQIA people have reclaimed as an inclusive, un-gendered, and positive way to describe themselves and their community. Can be used to describe one's sexual orientation and/or gender identity (Queer is also still used as a negative or derogatory slur to describe LGBTQI persons and community).

Racism – The societal/cultural, institutional, and individual beliefs and practices that privilege white people and subordinates and degrades people of color.

Sex – A medical term designating a certain combination of gonads, chromosomes, external genitalia, secondary sex characteristics, and hormonal balances. Because usually subdivided into 'female' and 'male', this category often does not recognize the existence of intersex people.

Sexism – The societal/cultural, institutional, and individual beliefs and practices that privilege men and subordinate and degrade women.

Sexual Orientation – A person's emotional, physical, and/or sexual attractions towards people.

Trans or Transgender – An umbrella term used to describe a group of individuals whose gender identity and how it is expressed to varying degrees are different than the sex assigned at birth.

Transphobia – The irrational fear, hatred, or intolerance of people who identify or are perceived as transgender.

Transgender – A person who identifies with a gender different than their biological sex assigned at birth. Transgender people may undergo gender affirmation treatment to align their body with their core identity, but not all desire or can afford to do so.

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Campus Counseling Services

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Anonymous Mental Health Screening
(<http://screening.mentalhealthscreening.org/shawnee>)



(<http://www.suicidepreventionlifeline.org/>)

Find us at...

Hatcher Hall
1001 4th Street
Portsmouth, OH 45662
(740) 351-3608

940 Second Street
Portsmouth Ohio 45662
Main: (740) 347-1732
Admission: (740) 347-1749
TTY: (740) 351-3159



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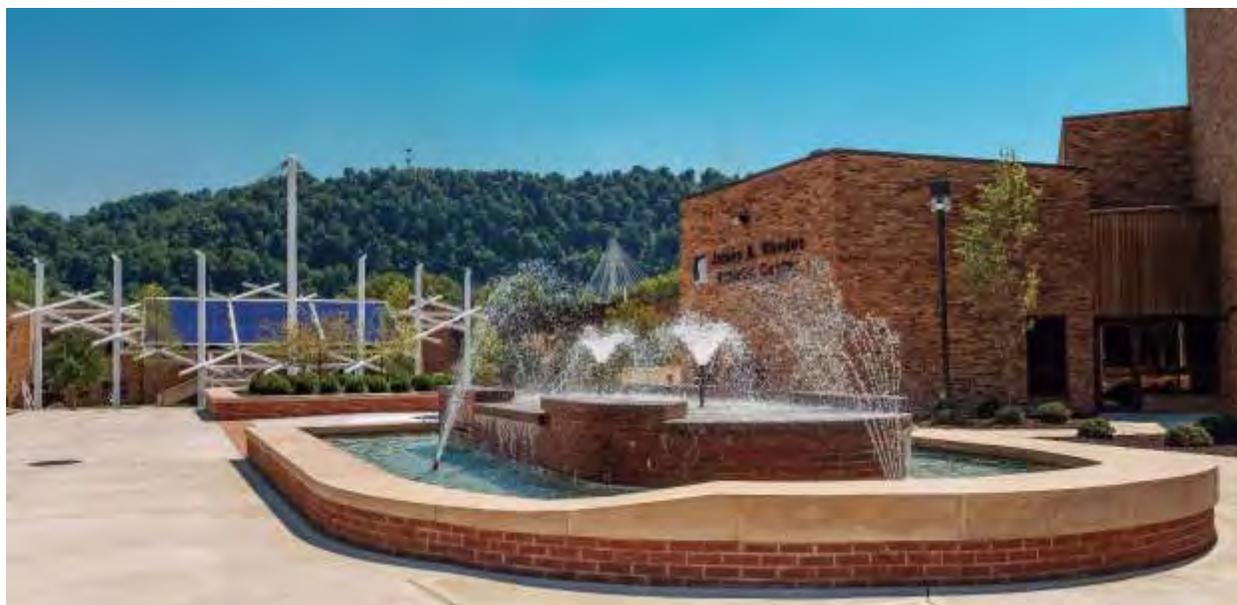
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Collective Bargaining Agreement

Shawnee State University &
Shawnee Education Association

August 2015 to August 2018





CONTRACT AGREEMENT
BETWEEN
SHAWNEE STATE UNIVERSITY
AND
SHAWNEE EDUCATION ASSOCIATION



2015-2018

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ARTICLE 1

ARTICLE 1. AGREEMENT AND INTENT

Section 1. Agreement between Shawnee State University and the Shawnee Education Association.

- A. This is an Agreement by and between SHAWNEE STATE UNIVERSITY ("University") and the SHAWNEE EDUCATION ASSOCIATION ("Association"), which is affiliated with THE OHIO EDUCATION ASSOCIATION and THE NATIONAL EDUCATION ASSOCIATION.
- B. The purpose of this Agreement is to set forth the wages, hours or terms and other conditions of employment as set forth in Section 4117.08 of the Ohio Revised Code for the employees represented by the Association. All personnel policies and practices in conflict with the provisions hereof are superseded by this contract and discontinued.

Section 2. Purpose and Intent.

The purpose and intent of the parties to this Agreement is to affirm their acceptance of good faith collective bargaining as a means of providing quality education and maintaining high standards of academic excellence at the University.

Section 3. Memorandum of Understanding (MOU).

If applicable language is missing from this Agreement, the parties will resolve any such omission through the memorandum of understanding (MOU) process.

Section 4. Non-Discrimination.

- A. The University shall not discriminate against any member of the bargaining unit on account of membership in, or activity on behalf of, the Association or its State or National Affiliates. Similarly, the Association shall not discriminate against any bargaining unit member who is not a member of the Association or its State or National Affiliates.
- B. The University and the Association jointly pledge that provisions of this agreement shall be applied uniformly to all members of the bargaining unit without regard to race, color, genetic information, religion, age, disability, national origin, ancestry, sex, pregnancy, sexual orientation, veteran status, or military status.

Section 5. Uniform Application.

The provisions of this Agreement shall be applied in a uniform fashion to all bargaining unit members.

ARTICLE 1

Section 6. Separability.

- A. Determination of Invalidity. The parties intend that this Agreement shall be construed under the laws of Ohio and applied in a manner consistent with applicable statutes and regulations properly enacted thereunder. In particular, this Agreement shall be governed under O.R.C. Section 4117.10 (A). In the event a court of competent jurisdiction shall determine that any provision of this agreement is contrary to any such statute or regulation, such provision alone shall become invalid and of no effect. The remainder of this Agreement shall not be deemed illegal or unenforceable. The parties agree to meet within thirty (30) days following any decision which renders any portion of this Agreement null and void for the purpose of negotiating an alternative provision on the same topic which is lawful.

- B. Necessitated Revision. If a state or federal law is enacted covering members of the unit affecting one or more provision(s) of this Agreement, the parties agree to meet as soon as practicable but no later than one (1) year after the effective date for the purpose of negotiating a substitute provision, if necessary.

Section 7. Entire Agreement.

This contract supersedes and cancels all previous Agreements including all memoranda of understanding (MOU), verbal or written, between the University and the Association and constitutes the entire Agreement between the parties.

ARTICLE 2

ARTICLE 2. NEGOTIATION PROCEDURE

Section 1. Negotiating Teams.

The collective bargaining procedure shall be conducted between representatives of the University and the Association. These representatives shall be called the negotiating teams. Each team may consist of no more than four (4) members. Each party represented in the procedure shall determine who will be its team representatives, but shall not select members of the other party involved in the procedure.

Section 2. Negotiating in Executive Session.

All negotiating sessions shall be in executive session, meaning only members of the teams, consultants as provided for in this procedure, and others as mutually agreed to between the teams shall be in the room during negotiating sessions.

Section 3. Consultants and Others.

Both parties are welcome to employ the services of consultants outside the negotiating sessions, may designate up to two (2) alternates, and with mutual consent, may invite observers to the negotiating sessions. Within the negotiating sessions consultants and alternates may serve as the spokesperson for the representative side. Observers may be present but will not typically participate in the discussion unless mutually agreed to by both parties.

Section 4. General Provisions.

The following provisions will be in effect unless otherwise agreed to by both parties:

- A. **Initiation.** Either party may serve the other party by written notice of the desire to negotiate at least ninety (90) days prior to the expiration of the current Agreement. The request from the Association shall be sent to the University President; a request from the University shall be sent to the Association President. Notification of the intent to bargain will be provided by the Association to the State Employment Relations Board (SERB).
- B. Each party will designate a negotiating team member who is authorized to tentatively agree to proposed language during bargaining. This designation may be changed with prior notice to the other party.
- C. **Ground Rules.** Each side shall appoint two members to meet prior to bargaining and establish alternative ground rules for negotiations by mutual agreement.
- D. **Agenda.** After the proposals have been exchanged at the first meeting, the agenda for subsequent negotiating sessions shall be established. By mutual agreement, the order of items on the agenda subsequently may be changed.
- E. **Time Table.** Meetings during any week or changes in the frequency of time or place of

ARTICLE 2

meeting shall be made by mutual consent of the two teams at the end of any meeting. The time and place of each subsequent meeting shall be established before any session is concluded.

- F. Exchange of Information. Upon request, the University and the Association agree to provide each other with information pertinent to topics/subjects that may be discussed during the negotiating period.
- G. Written Proposals. To avoid misunderstanding and to facilitate communication, all major proposals and counter-proposals shall be provided in writing.
- H. Caucus. Either team may call for a caucus during a session. A caucus shall be for a period of no more than thirty (30) minutes unless otherwise agreed to.
- I. Tentative Agreement. As written articles or provisions are negotiated and agreed upon, they shall be initialed as tentatively accepted (TA) by the authorized representative as designated in Section 4 B.

Section 5. Agreement.

- A. When all articles have been tentatively accepted, the entire tentative agreement will be presented by the Association to its members for ratification.
- B. Upon ratification by the bargaining unit in accordance with Association Bylaws, the tentative agreement shall be submitted by the Administration to the Board of Trustees for review and approval.
- C. Upon the Board's approval of the Agreement, the Association President, University President, and Chairperson of the Board of Trustees shall sign the document. The signed Agreement shall constitute a legally binding contract between Shawnee State University and Shawnee Education Association.
- D. Individual faculty employment contracts shall contain a statement indicating compliance with this Agreement.
- E. Any modifications, alterations, additions and/or deletions of and/or to this Agreement prior to its expiration shall be set forth in writing and signed by the President of the University and the President of the Association or by written authorization to their designees for a specific issue. No modifications, alterations, additions and/or deletions shall have any effect unless set forth in writing and signed by the parties herein identified.

Section 6. Impasse.

- A. If by thirty (30) days prior to the expiration date, agreement cannot be reached on all issues, then either party may call for the services of the Federal Mediation and Conciliation Services (F.M.C.S.). If one party requests the services of F.M.C.S., the other shall join in

ARTICLE 2

the request. Mediation shall continue until the expiration date of the Agreement unless both parties mutually agree to a specific extension date.

- B. The parties agree that this impasse procedure supersedes the dispute resolution procedure as set forth in Section 4117.14 of the Ohio Revised Code, but it does not waive the Association's rights under Section 4117.14 (D 2) of the Ohio Revised Code.

ARTICLE 3

ARTICLE 3. MEMBERSHIP FEES AND DUES PAYROLL PROCESSES

Section 1. Payment of Dues or Fair Share Fees.

- A. The Association Treasurer shall provide the University Payroll Department the amount of bargaining unit dues and fair share fee payers amount no later than two (2) weeks prior to the first pay of the academic year. The Association Treasurer will also provide the University Payroll Department with a complete listing of all bargaining unit members and fair share fee payers.
- B. The faculty member may opt to remit full payment in a lump sum or by payroll deduction. Upon receipt of a written authorization signed by the faculty member, the University agrees to deduct the dues, fair share fees, and assessments from the pay of bargaining unit members. This written authorization will remain in effect from year to year unless a new authorization form is submitted to the Payroll Department and received no later than two (2) weeks prior to the first pay of the academic year.
- C. Dues.
 - 1. The University shall deduct dues in the amount specified by the Association from the pay of all bargaining unit members upon receipt of individually signed authorization forms. The deductions will be taken in 18 equal payments over a nine (9) month period.
 - 2. On a monthly basis, the University will transmit to the Association Treasurer a payment for dues deducted for each Association member equivalent to one-ninth (1/9th) of his/her annual membership dues.
- D. Fair Share Fees
 - 1. Faculty members who elect not to become members of the Shawnee Education Association will be assessed a fair share fee for the Association's representation of such non-members during the term of this Contract. No non-member filing a timely demand shall be required to subsidize partisan, political or ideological causes not germane to the Association's work in the realm of collective bargaining.
 - 2. The fair share fee shall not be more than 100% of the certified dues of the Association.
 - 3. The Association shall provide the payroll department with the list of fair share fee payers the first week of January of each year. For existing full-time faculty, the deductions shall begin with the second payroll period in January and be withheld in equal biweekly payments over the remaining pays of the regular academic year.
 - 4. For new full-time faculty, payroll deduction of the fair share fee shall begin with the second payroll period in January or sixty (60) days after the beginning of employment, whichever is later.

ARTICLE 3

5. The University agrees to transmit all amounts deducted to the Association on a monthly basis.
6. The Association represents to the University that an internal rebate procedure has been established in accordance with Section 4117.09 (C) of the Ohio Revised Code, that a written procedure for challenging the amount of the representation fee has been established and will be given to each member of the bargaining unit who does not join the Association, and that such procedure and notice shall be in compliance with all applicable state and federal laws and the Constitutions of the United States and the State of Ohio.
7. Upon timely demand, fair share members may apply to the Association for an advance reduction/rebate of the fair share fee pursuant to the internal procedure adopted by the Association.
8. On a monthly basis, the University will transmit payment to the Association Treasurer together with a list of names of members of the Faculty whose Association dues or fair share fees have been deducted and, upon receipt, the Association shall assume full responsibility for the disposition of all funds deducted. The University's obligation to make deductions for membership dues or fair share fees shall end upon termination of employment.
9. The Association agrees that it shall indemnify and hold harmless the University, its officers, trustees, employees or agents, against all claims, damages, causes of action, awards, costs, expenses, and any and all damages arising or resulting from, by reason of, or touching upon the University's agreement to the provisions of this article providing for a fair share fee payable to the Association, and the University's actions and conduct with respect to these provisions.

Section 2. Payroll.

- A. Pay periods are established by the University. The University will continue to pay bargaining unit members on a bi-weekly basis. If the University changes to a different payroll system (i.e. pay on the 15th or 30th) the University will give the Association members at least six (6) months advance notice.
- B. Normal payroll distribution methods shall include the options of direct deposit or payroll debit cards. Association members will be required to have payroll checks deposited electronically or on payroll debit cards. Pay vouchers will only be available online and will not be mailed via postal services. The University will provide assistance to an employee to obtain this voucher, if necessary.

ARTICLE 4

ARTICLE 4. ASSOCIATION RIGHTS

Section 1. Rights of the Association.

A. Conduct of Association Business

1. The President of the University and representatives of the Association shall meet as requested by either party.
2. The President of the Association shall have the right to address the Board at all public meetings of the Board.
3. At the beginning of each academic year, the Association President will provide to the University a list of those members of the Association who are authorized to speak on behalf of the Association and/or to transact business on behalf of the Association. The University recognizes that the Association is the sole representative for matters concerning this Agreement. The Association President shall also provide the University the names of the primary and alternative contacts for communication purposes.
4. The Association may provide the University with the names of two (2) bargaining unit members, in addition to the President of the Association and the OEA representative for matters related to complaints, disciplinary actions, grievances and other disputes. Association representatives may aid in informal resolutions to disputes, file and process grievances, and/or represent bargaining unit members in any internal disciplinary or grievance procedure or any other dispute with the University.

B. The Association President shall have access to the following:

1. Agenda and minutes of all Board of Trustees meetings at the time of dissemination;
2. University policies and procedures

C. Upon written request, public documents as defined in Section 149.43 O.R.C. shall be made available to the Association. The University may assess the Association the standard copy fee charged to other campus organizations for any copies requested.

D. The Association shall be permitted to use the University's classrooms, lounges, grounds and facilities at no cost. University facilities shall be provided at the rates established by University policy. Any additional cost incurred by the University shall be paid by the Association upon submission of an appropriately documented charge. If the University decides to implement a parking fee, this section shall not be interpreted to exempt bargaining unit members from such a fee.

E. The Association shall be authorized to use University-owned office and instructional equipment and supplies. The Association shall reimburse the University for the use of office supplies.

ARTICLE 4

- F. The Association shall be permitted to use the University's interdepartmental mail facilities.
- G. The Association shall be permitted to use the University telephone and long distance system in order to conduct official Association business. Long distance charges shall be paid by the Association.
- H. The Association shall be permitted to use the University's printing services on a cost for use basis. Billing for these services will be handled through the established billing procedure of the University. Charges to the Association for such services will be the same as those assessed other campus groups and individuals.
- I. Duly authorized representatives of the Association who are not employed by the University shall be permitted to transact official business with Association members on University premises during normal business hours, provided such business does not interfere with the employees' duties.
- J. The Provost will provide file storage space within the University accessible by the SEA sufficient for three (3) University-provided lockable file cabinets.
- K. The University shall continue to provide the Association with rights to communicate with members over a designated SEA e-mail list. The terms and conditions for participation on that list shall be considered an internal SEA matter.

Section 2. Rights of Association Representatives and of Bargaining Unit Members.

- A. All bargaining unit members, whether they are members or fair share, shall have the right to the active assistance and representation by a representative of the local, state or national organizations of the Association in any dispute with the University regarding the interpretation or application of this Agreement. Bargaining unit members may request Association representation at any time during any meeting. This request will not be denied and the meeting may be rescheduled in order to allow sufficient time to arrange representation and identify the appropriate parties to participate in the meeting.
- B. A bargaining unit member may waive representation by the Association in disciplinary proceedings or grievances. If a bargaining unit member chooses to do so, the bargaining unit member shall sign a waiver form provided by the Association.
- C. During any investigatory or disciplinary meeting at which an authorized Association Representative is present, the Association Representative shall have the right to:
 - 1. Request clarification of any questions asked of the bargaining unit member;
 - 2. Help to clarify any responses to questions by the bargaining unit member;

ARTICLE 4

3. Request clarification and explanation of any charges;
 4. Request clarification of the nature and reliability of any evidence offered in support of the charges;
 5. Assist the bargaining unit member in presentation of his or her own evidence;
 6. Gather information deemed relevant by the Association to the bargaining unit member's defense;
 7. Discuss the issue with the bargaining unit member in a private meeting;
 8. Act to calm the bargaining unit member if needed.
- D. During any grievance meeting the Association Representative shall have the right to represent the bargaining unit member and to speak on behalf of the bargaining unit member filing the grievance.
- E. Any conferences, communications, or records between Association representatives and bargaining unit members regarding grievances, complaints or any other matter related to this agreement or collective bargaining that takes place on or off University premises shall be considered private and confidential to the extent permitted by state and federal law.
- F. The Association shall determine, in accordance with the standards of the Ohio Education Association, the National Education Association and relevant laws any and all such matters related to its own internal procedures.
- G. The Association shall determine in accordance with its own internal policies the conditions under which Association sanctioned or Association grievances may be brought forward.

Section 3. Release Time.

The University shall provide release time with full pay for the SEA President nine (9) credit hours each year, but not more than six (6) credit hours in any one semester. The University will cooperate with the Association President in the scheduling of his/her workload. This release time may be distributed among other Association representatives.

ARTICLE 5

ARTICLE 5. SCOPE OF THE UNIT

Section 1. Bargaining Unit.

A. The bargaining unit shall include:

1. All full-time faculty including tenure-track, continuing contract, tenured (ref. Article 11).
2. Full-time instructors – non-tenure track (ref. Article 10).
3. Department Chairpersons (see exceptions in par. B below)
4. Endowed chairs.
5. Program Directors (see Article 13).

B. The Administrative Department Chairpersons in Nursing and Teacher Education are not in the bargaining unit.

Section 2. Types of Full-time Faculty Employment Classifications.

A. The determination of new or vacant positions as either tenure track or non-tenure track will be made by the Provost after consultation with Dean and Department Chairperson.

B. Other Full-Time:

Endowed Chairs and faculty members funded partly or fully by grant funds are members of the bargaining unit. (See Article 15 for salary exceptions for holders of Endowed Chairs and faculty fully funded by a grant.)

Section 3. Exclusions from the Bargaining Unit.

A. Full-time Temporary (FTT) Contract for One Semester:

1. Faculty members holding a full-time temporary contract for one (1) semester are not in the bargaining unit. FTT contracts may be awarded to a qualified candidate for one (1) semester. Such persons:
 - a. Shall not teach more than fifteen (15) contractual hours in this term, and;
 - b. Shall receive prorated salary based upon such assignment.
 - c. Other than benefits that may be mandated by law, employment-related fringe benefits are not included as part of any full-time temporary one-semester contract.

ARTICLE 5

2. Persons on FTT contracts are assigned only teaching responsibilities. If employment extends beyond one (1) semester in a full-time temporary capacity, the employee will be considered to be on a full-time non-tenure contract for the remainder of the academic year and will be considered a bargaining unit member.
- B. Visiting faculty (VF) will have full-time contracts that clearly indicate their visiting status. Such contracts will normally not exceed three (3) years except in exigent circumstances.
1. Employment of a VF shall be recommended by a faculty selection committee. Salary and University-provided benefits shall follow the terms of the Agreement for the duration of the contract.
 2. VF contracts will be awarded for such purposes as: the temporary filling of vacancies due to bargaining unit faculty on leave, inability to obtain qualified faculty for an established bargaining unit position, unforeseen circumstances, etc.
 3. VF contracts expire on the last day of the spring semester (after submission of grades.) VF teaching in the summer term immediately following the expiration of their academic year contract shall be compensated according to Article 15, University Funded Salary System.
- C. Part-time (limited service or adjunct) faculty. Faculty who teach twelve (12) or fewer contractual hours per semester and no more than nineteen (19) contractual hours per academic year.
- D. Academic Administrators (including those holding academic titles).

Section 4. Administrative Right of Return or Integration into the Bargaining Unit.

- A. Academic administrators (President, Provost, Associate Provost(s), Academic Deans, and Administrative Chairpersons) have the right to step down from their position as administrator and enter the ranks of the faculty under the following conditions:
1. The administrator possesses the academic credentials and qualifications to meet or exceed the rank of Assistant Professor in a current department at SSU.
 2. Bargaining unit members who are appointed to non-bargaining unit administrative positions at Shawnee State University shall have the right to return to the bargaining unit at the same rank and tenure status as the time they accepted the position.
 3. The returning administrator's salary shall be determined based on the applicable rank and experience (including the years served as academic administrator) as identified in Article 15, Section 2.
 4. Right of return to the bargaining unit is guaranteed only for administrators who were bargaining unit members at Shawnee State University. This right of return shall apply

ARTICLE 5

regardless of the status of faculty lines in the department but no existing faculty shall be eliminated as a consequence of this return.

ARTICLE 6

ARTICLE 6. UNIVERSITY GOVERNANCE

Section 1. Purpose of Article.

The purpose of this Article is to delineate the respective roles of the SEA and UFS and promote the voice of faculty in University governance.

Section 2. Respective Roles of SEA and UFS.

- A. Both parties to this Agreement recognize the Shawnee Education Association as the sole representative of the faculty in all matters affecting wages, hours, or terms and other conditions of employment, and the continuation, modification, or deletion of an existing provision to this collective bargaining Agreement. Both parties to this Agreement recognize the University Faculty Senate or other organizations jointly approved by the UFS and the Board of Trustees, as long as they exist, as the representative for all matters that do not pertain to or affect wages, hours, or terms and other conditions of employment.
- B. Both parties recognize and affirm the importance of faculty participation in the governance of the University on all matters related to the overall academic mission of the University that do not pertain to or affect wages, hours and other conditions of employment. Any changes in policies or procedures that directly impact the academic mission of the University shall be in accordance with the Faculty Senate Constitution.
- C. Revisions to University policies that directly impact provisions of this agreement and/or wages, hours or other terms and conditions of employment as defined by ORC 4117 will be addressed between the Association and the University in a Memorandum of Understanding (MOU).

Section 3. Academic Department Governance.

- A. Each academic department is encouraged to maintain or develop a Departmental governance document that defines the decision making process within the department on matters of curriculum and academic policy. This document should be periodically reviewed by the faculty in the department and is not grievable. Departmental governance documents may not contradict the provisions of this agreement. Departmental governance documents shall not address issues that impact provisions of this agreement and/or wages, hours or other terms and conditions of employment.
- B. This document may address such issues as:
 - 1. Departmental curricular matters such as curriculum revision, requirements for major and minor and program development to be submitted to the Educational Policies and Curriculum Committee (EPCC).
 - 2. Departmental budgetary matters (e.g., distribution of travel funds, procedure for library acquisitions, etc.).

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3. Guidance on the participation on faculty selection committees.
4. Development of course/program assessment plans, collection of assessment data, writing assessment reports, and reviewing assessment data (for program and institutional accreditation).
5. Procedures for adopting or revising common course syllabi and other common instructional materials.
6. Establishment and functioning of department committees.
7. Procedures for department meetings (e.g. frequency, etc.).

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ARTICLE 7. ACADEMIC FREEDOM, FIRST AMENDMENT RIGHTS AND ACADEMIC RESPONSIBILITY

Section 1. Introduction.

The University and the Shawnee Education Association are committed to the concept of Academic Freedom and Professional Responsibility of Faculty as those concepts are set forth in the 2010 *Policies and Procedures of the American Association of University Professors* customarily known as the “AAUP Redbook”.

Section 2. Academic Freedom and First Amendment Rights.

- A. This provision of the agreement shall apply to any person who is employed by the University in the role of faculty whether that person is, or is not a member of the bargaining unit (e.g., adjuncts, academic administrators when teaching, guest lecturers, etc.).
- B. Academic Freedom: Academic freedom protects the right of faculty in the performance of their duties as University professors to:
 - 1. Freedom in their classroom when discussing subject matter that is reasonably related to the relevant course material and established curriculum;
 - 2. Choose curricular materials and pedagogical techniques within the reasonable boundaries of professional discretion subject to relevant standards of academic merit, teaching effectiveness, and consistency with catalogue course descriptions;
 - 3. Freedom in research and publishing subject only to standards of academic merit;
 - 4. Freedom to participate and speak freely on University affairs in one’s Department, the Faculty Senate, the committees of the Faculty Senate, on matters before the Faculty Senate, in governance committees or any other University committee, on educational and curricular issues and on matters of public concern;
 - 5. Choose to participate or not to participate and to speak freely on matters of concern to the Association.
 - 6. This provision shall apply equally to electronic communications.
- C. First Amendment Rights: Bargaining unit members retain the right to speak and act within the bounds of the First Amendment as it applies to private citizens outside the scope of their official duties. Under no circumstances may a bargaining unit member be sanctioned or disciplined for exercising their First Amendment rights in their capacity as private citizens, including social media and personal cell phones, save in those instances in which the bargaining unit member claims to speak on behalf of the University.

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Section 3. Academic Responsibility and Professional Ethics.

- A. The concept of academic freedom must also be understood in the context of academic and professional responsibility of the University professor as a responsible educator.
- B. When speaking in their capacity as University professors:
 - 1. Faculty shall respect the rights of their colleagues and other members of the University community to voice their views;
 - 2. Faculty shall respect and defend the academic freedom of students;
 - 3. Faculty will not introduce material into the classroom that is unrelated to the subject matter;
 - 4. Faculty will not engage in behavior that materially and substantively disrupts established University procedures. Disagreement, controversy and argumentation shall not constitute evidence of material and substantive disruption of University processes;
 - 5. Faculty will not engage in speech or behavior that is abusive, threatening, defamatory or reasonably interferes with the ability of other members of the University to perform their duties;
 - 6. Faculty shall observe all institutional regulations that are consistent with this Agreement;
 - 7. Faculty shall not claim to speak for the University but may identify the University for affiliation purposes only;
 - 8. Faculty shall adhere to standards of academic honesty as defined by the relevant professional association.
- C. Allegations of misconduct against bargaining unit members in relation to this section shall be addressed in accordance with Article 18.

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ARTICLE 8. MANAGEMENT RIGHTS

Except as expressly modified by the terms of this Agreement, management shall have all of the rights provided for by the Ohio Revised Code, Section 4117.08 (C) as listed below:

- A. Determine matters of inherent managerial policy which include, but are not limited to areas of discretion or policy such as the functions and programs of the public employer, standards of services, its overall budget, utilization of technology, and organizational structure;
- B. Direct, supervise, evaluate, or hire employees;
- C. Maintain and improve the efficiency and effectiveness of governmental operations;
- D. Determine the overall methods, process, means, or personnel by which governmental operations are to be conducted;
- E. Suspend, discipline, demote, or discharge for just cause, or lay off, transfer, assign, schedule, promote, or retain employees;
- F. Determine the adequacy of the work force;
- G. Determine the overall mission of the employer as a unit of government;
- H. Effectively manage the work force; and
- I. Take actions to carry out the mission of the public employer as a governmental unit.
- J. The University's failure to exercise any of its rights or its failure to exercise such rights in a particular way shall not be considered a waiver of such rights.

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ARTICLE 9. INITIAL APPOINTMENTS

Section 1. Initial Rank Assignment for New Bargaining Unit Members.

- A. Assignment of rank for new bargaining unit members shall be recommended by the bargaining unit search committee in consultation with the Dean and approved by the Provost and the SEA President or designee.
- B. New tenure-track bargaining unit members may be hired in at a rank higher than that of Assistant Professor for exceptional past teaching, service, and scholarship at the college level.
- C. The rank of new tenure-track bargaining unit members with experience at other regionally accredited institutions of higher education will be evaluated using the standards for academic rank at SSU found in this Article.
- D. No new bargaining unit member may be employed with tenure.
- E. Full-time instructors (FTI) and full-time temporary (FTT) are non-tenure track and not eligible for initial appointment above senior instructor. Provisions related to FTIs are found in Article 10.
- F. Visiting faculty (VF) will be assigned rank according to their credentials. Using the same review process as used for bargaining unit members, VF will be placed on the initial salary schedule (Article 15, Section 1).

Section 2. Initial Rank Criteria.

The criteria for the assignment of initial rank are:

- A. Instructor: To be employed at the rank of Instructor (non-tenure track) at the University, the candidate must have the following credentials:

Bachelor's degree or higher in area of teaching specialization, professional experience related to the teaching area, and, where applicable, certification/licensure in a specialized area.
- B. Senior Instructor: To be employed at the rank of Senior Instructor (non-tenure track) at the University the candidate must have the following credentials:
 - 1. Master's degree or higher in area of teaching specialization and professional experience related to the teaching area and, where applicable, certification/licensure in a specialized area; or
 - 2. Bachelor's degree in area of teaching specialization and professional experience related to the teaching area and, where applicable, certification/licensure in a specialized area,

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and three (3) years of full-time teaching (or applicable) experience as an instructor at a regionally accredited institution.

- C. Rank of Assistant Professor: To be employed at the University at the rank of Assistant Professor (tenure track) at the University, the candidate must have the following credentials:
 - 1. Doctorate or discipline-appropriate degree in area of teaching specialization from a regionally accredited institution, or
 - 2. Master's degree in area of teaching specialization from a regionally accredited institution, and three (3) years of full-time teaching experience at regionally accredited institution or five (5) years of professional experience in the area of specialization.

- D. Rank of Associate Professor: To be employed at the University at the rank of Associate Professor (tenure-track) at the University, the candidate must have the following credentials:
 - 1. Doctorate, discipline-appropriate degree in area of teaching specialization from a regionally accredited institution, or
 - 2. Master's degree in area of teaching specialization and six (6) years of full-time teaching experience as an Assistant Professor at a regionally accredited institution; or if there is evidence of exceptional scholarship, professional, and/or teaching experience may be considered as fulfilling or partially fulfilling the teaching experience.

- E. Rank of Professor: To be employed at the University at the rank of Professor at the University (tenure-track), the candidate must have the following credentials:
 - 1. Doctorate or discipline-appropriate degree in area of teaching specialization and five (5) years of full-service teaching experience as an Associate Professor at an accredited regional institution; or
 - 2. Master's degree in area of teaching specialization and nine (9) years of full-service teaching experience as an Associate Professor at an accredited regional institution or if there is evidence of exceptional scholarship, professional, and/or teaching experience may be considered as fulfilling or partially fulfilling the teaching experience.

- F. Associate, Bachelor's, Master's, and Doctorate degrees are those degrees awarded by institutions of higher education which were regionally accredited for the degree awarded at the time it was awarded by agencies recognized by the Secretary of the U.S. Department of Education.

- G. Determination of which degrees are considered as "in the area of teaching specialization" and which degrees are considered "discipline appropriate" is the joint responsibility of the department faculty, Dean, and the Provost.

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Section 3. Initial Salary Placement.

- A. In determining initial salary placement as identified in Article 15, discipline related work experience may be considered all or in part as “applicable experience” equivalent to teaching experience. The years credited shall be recommended by the faculty search committee and approved by the Dean based on the following:
1. One (1) year for each complete year of service as a full-service faculty member at a regionally accredited institution of higher education.
 2. One (1) year for every two (2) years taught at the secondary level in discipline-appropriate content area (non-teacher education faculty);
 3. One (1) year for every one (1) year taught at PreK-12 levels for employment in Teacher Education.
 4. One (1) year for every one (1) year of full-time substantive work experience, including post-doctoral work, directly related to the area of teaching specialization. Generally, pre-baccalaureate experience is not credited unless otherwise agreed to by the committee and the Dean.
 5. One (1) year for every two (2) years of full-time substantive work experience in a closely related area of teaching specialization. Generally, pre-baccalaureate experience is not credited unless otherwise agreed to by the committee and the Dean.
 6. One (1) additional year may be credited for exceptional or distinguished experience as agreed to the committee and the Dean.

Section 4. Additional Contract Conditions on Initial Appointment.

- A. The Dean in consultation with the search committee may recommend that individuals be hired with specific conditions placed on his/her contract, such as completion of the discipline-appropriate degree by a specified date, attaining certain enrollment levels, achieving other benchmarks of his/her program's success, etc.
- B. Any condition shall be included on the Worksheet Summary for the candidate and on the initial contract of employment. Conditions of employment, other than completion of degrees, shall be used for contract nonrenewal in accordance with the individual bargaining unit member's employment contract or the conditions will be removed at the end of the fourth year of employment.
- C. Upon employment, only those conditions recommended by the committee in consultation with the Dean shall become part of the conditional contract(s) issued to that bargaining unit member.

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- D. Bargaining unit members employed into a tenure track position but with conditions will be placed at the rank for which the current credentials are met. Upon satisfaction of the conditions, the bargaining unit member will be reevaluated and reclassified at the appropriate higher rank and salary step that would have met the minimum conditions for the initial employment. This action will not be retroactive or treated as a promotion for salary purposes as provided in Article 15.

Section 5. Application.

This Article shall be used to determine the initial salary placement and salaries for new bargaining unit appointments as identified in Article 15. This Article has no application in any other situations including academic reorganization where existing bargaining unit are reassigned to new or different academic programs.

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ARTICLE 10. FULL-TIME INSTRUCTORS (NON-TENURE TRACK)

Section 1. Full-time Instructor (FTI) Contract Status (non-tenure track).

A. FTI Contracts

1. A FTI/NTT shall be awarded a contract for the academic year beginning the first Monday in the fall semester and continuing to the submission of grades at the end of the spring semester.
2. FTI/NTT contracts are awarded to faculty whose primary duty is to provide classroom, laboratory, and clinical instruction for credit and whose faculty employment contract specifies appointment to a full-time non-tenure track position with the rank of instructor or senior instructor.
3. FTI/NTT teaching in the summer term immediately following the expiration of the employment contract shall be compensated according to Article 15.
4. Benefits and remuneration for FTI/NTT contracts shall follow the terms of this Agreement.
5. The employment of full-time instructors (FTI) or NTTs will not exceed 20% of bargaining unit members. During the term of this Agreement the University will make an effort to reduce the percentage of FTIs in University College to no more than 50%.

B. FTI Workload

1. The normal academic year classroom teaching load for non-tenure-track bargaining unit members (full-time instructors – FTI/NTT) on the semester system is 30 contractual hours. During the academic year, no FTI/NTT faculty member shall be assigned a workload beyond eighteen (18) contractual hours in a particular semester without his/her permission.
2. Teaching load for FTIs/NTTs shall comprise up to 90% of their total workload. The remaining time shall be dedicated to service in the form of committee meetings, scheduled office hours, etc.
3. FTI/NTT may teach any developmental or 1000 or 2000 level courses. FTI/NTT may teach 3000 or 4000 level courses when a vacancy arises due to exigent circumstances during the academic year and the department chairperson or program leader recommends. FTI/NTTs may also teach senior seminar or supervise student teaching/clinical practice. In any instance of FTI/NTT teaching these courses, the University will consult with the SEA President prior to such assignment.
4. FTI/NTT shall not be designated as department chairs or program directors, clinical or academic program coordinators. However, they may be assigned other supplemental

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administrative duties. The University will review the status of any FTI/NTT whose contracts are renewed for academic year 2015-2016 who was serving in one of the above leadership capacities to determine if the position should be adjusted from non-tenure to tenure-track status. If the University determines that FTI/NTT should continue to serve in one of these capacities, the position will be deemed tenure track and the bargaining unit member holding that position will be retained and be considered tenure track.

Section 2. Qualifications for appointment to a non-tenure track position.

- A. The credential and experience requirements for an FTI employed at the rank of Instructor include: a Bachelor's degree or higher in area of teaching specialization, professional experience related to the teaching area, and, where applicable, certification/licensure in a specialized area.
- B. The credential and experience requirements for a FTI employed at the rank of Senior Instructor include:
 - 1. Master's degree in area of teaching specialization and certification/licensure in a specialized area where applicable; or
 - 2. Bachelor's degree in area of teaching specialization and professional experience related to the teaching area and, where applicable, certification/licensure in a specialized area, and three (3) years of full-time teaching experience as an instructor at a regionally accredited institution of higher education.
- C. Acceptable academic degrees are those awarded by institutions of higher education which were regionally accredited for the degree awarded at the time it was awarded by agencies recognized by the Secretary of the U.S. Department of Education. The Provost and President of SEA, or their designees, must mutually agree that degrees from foreign institutions are the equivalent of regionally accredited degrees.
- D. Determination of which degrees are appropriate and "in the area of teaching specialization" is the joint responsibility of the departmental faculty, Dean, and the Provost in consultation with the SEA President.

Section 3. Promotion.

- A. To apply for promotion to Sr. Instructor an FTI with the rank of instructor must meet the following academic and experience requirements:
 - 1. Master's degree in area of teaching specialization certification/licensure in a specialized area where applicable; or
 - 2. Bachelor's degree in area of teaching specialization and professional experience related to the teaching area and certification/licensure in a specialized area where applicable

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and three (3) years of full-time teaching experience as an instructor at Shawnee State University.

- B. The FTI must submit a letter requesting promotion to Sr. Instructor to the Dean. Such promotion requires a written recommendation from the Dean and approval by the Provost and shall take effect the fall semester of the following academic year.

Section 4. Eligibility for Tenure Track.

- A. FTIs are established as non-tenure track positions and are not eligible for tenure. However, if an FTI meets the criteria for the rank of Assistant Professor (as identified in Article 11), the FTI may apply and be considered for an announced tenure-track (TT) vacancy in accordance with the University's faculty employment procedures.
- B. If hired into a tenure-track position and upon completion of three (3) years serving as a tenure-track Assistant Professor at the University, the former FTI bargaining unit member will be eligible to apply for early tenure as addressed in Article 11, Section 3.

Section 5. Contracts Renewal/Non-renewal.

- A. A FTI shall be issued a non-tenure track contract for an academic year. There is no limit to the number of contracts that can be awarded to a FTI however, non-tenure track employment does not automatically renew.
- B. After the FTI receives two (2) one-year contracts, the University in consultation with the department chairperson, may award additional non-tenure track contracts with durations of 3 years. If, at the end of the three (3) year contract, the University determines there is a need to reduce the contract duration, the Dean will consult with the Department Chairperson prior to making the final determination to issue a 1, 2, or 3 year contract based on departmental/programmatic needs.
- C. If the University does not renew the FTI contract that member shall be notified of such decision by March 15.
- D. During a FTI's individual contract period the faculty member may only be terminated for cause.

Section 6. Notice of Contract Renewal/Non-renewal.

- A. Notice to the FTI of renewal or non-renewal of employment shall be handled as follows:
 - 1. Personal delivery to the bargaining unit member; and/or
 - 2. By certified U.S. mail to the bargaining unit member's last address provided by the member for payroll purposes.

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- B. The University's obligation to serve notice is met if the date of personal delivery, or the postmarked date of mailing, is on or before March 15 for non-renewal.

ARTICLE 11. PROMOTION AND TENURE

Section 1. Tenure System.

- A. Definition of Tenure: Tenure is defined as a continuous employment relationship with the University that is officially recognized as such by the Board of Trustees. Tenure is granted by the Board of Trustees upon successful demonstration by the bargaining unit member of fulfillment of the requirements for tenure and rank of Associate Professor in accordance with the criteria and procedures of this agreement. Tenured faculty may only be disciplined or terminated for just cause.
- B. Definition of Continuing Contract: Continuing contract is a continuous employment relationship with the University that has been established by a bargaining unit member based on collective bargaining agreements in place prior to the creation of the tenure system. Discipline or termination of faculty with continuing contract may only be for just cause.
- C. An award of tenure must be earned by faculty members and on the basis of their past performance during the tenure-track period as evaluated by tenured faculty, the academic administration, (i.e., Deans, Provost), University President, and the Board of Trustees. Tenure cannot be acquired automatically by length of service. Tenure cannot be acquired or denied automatically by procedural error.
- D. The awarding of tenure is one of the most significant aspects of the performance evaluation system of Shawnee State University. A favorable tenure recommendation shall be based on a record of demonstrated achievements in teaching, as well as, scholarship (which can include creative activities, etc.), and/or service for which the evidence of excellence in teaching, substantial or outstanding scholarship and/or service is clear and consistent.

Section 2. Eligibility for Promotion.

- A. A tenured bargaining unit member must meet the following requirements in order to be eligible to apply for promotion to the Rank of Professor:

Discipline-appropriate degree at the Master's level or higher in the area of teaching specialization and five (5) years of full-service teaching experience as an Associate Professor, three of which must be at Shawnee State University.

- B. A tenure-track bargaining unit member must meet the following requirements in order to apply for promotion to:

- 1. Rank of Associate Professor:

Discipline-appropriate degree at the Master's level or higher, in the area of teaching specialization and six (6) years of full-time teaching experience as an Assistant Professor, at least three of which must be at Shawnee State University.

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2. Rank of Assistant Professor:

Discipline-appropriate degree at the Master's level or higher in the area of teaching specialization, three (3) years of full-service teaching experience as a senior instructor, all of which must be at Shawnee State University.

- C. Determination of which degrees are discipline-appropriate and "in the area of teaching specialization" is the joint responsibility of the departmental faculty, Dean, and the Provost in consultation with the SEA President (see Article 9, Initial Appointments).
- D. All tenure track faculty employed by Shawnee State University shall be considered to have the discipline-appropriate degree in the area of teaching specialization. Any related compensation adjustments will become effective fall semester 2015 and will not be retroactive.
- E. Senior Instructors currently employed in tenure-track positions will be reclassified if they meet the qualifications for Assistant Professor. The following actions will be taken in this reclassification process. No adjustment as a result of this reclassification will be treated as a promotion as identified in Article 15:
 - 1. Those faculty meeting the credentials identified in Article 9 will be reclassified at the higher rank (i.e., Sr. Instructor or Assistant Professor).
 - 2. Those being reclassified will be placed on the continuing salary schedule at the minimum step of the higher rank or the step closest to the current salary that provides an increase.
 - 3. These bargaining unit members who are on conditional contracts must meet the conditions of their individual contracts prior to reclassification.
- F. The reclassification and compensation of bargaining unit members employed on a conditional contract are addressed in Article 9.

Section 3. Eligibility for Early Tenure and Promotion to Associate Professor.

- A. Upon recommendation of the bargaining unit member's mentoring committee after successful completion of the third year review, the bargaining unit member may apply for early promotion to Associate Professor and Tenure in either year 4 or in year 5.
- B. In such case, the bargaining unit member shall follow the promotion and tenure application process and timeline identified in Sections 5 and 10.
- C. If the bargaining unit member is unsuccessful in his/her attempt for early promotion and tenure, the bargaining unit member will be permitted to reapply in year six following the timeline and application process for promotion to Associate Professor and Tenure in this Article.

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D. Application for early tenure will be permitted one time.

Section 4. Criteria for Promotion in Rank.

The Common promotion criteria reflected in Appendix A have been established by the consolidation of criteria previously developed by academic departments. The purpose is to provide standards through the duration of this agreement to ensure consistency in the rigor and equity of promotional decisions across the Colleges.

- A. Promotion to the rank of Assistant Professor requires the candidate to demonstrate that he or she has met the criteria for excellence in teaching. (ref. Appendix A)
- B. Promotion to the rank of Associate Professor and Tenure requires the candidate to demonstrate that he or she has met the following:
 - 1. Excellence in teaching and outstanding achievement in scholarship; or
 - 2. Excellence in teaching and outstanding achievements in service; or
 - 3. Excellence in teaching and substantial contributions in both scholarship and service.
- C. Promotion to the rank of Professor at Shawnee State University requires the candidate to demonstrate that he or she has met the following:
 - 1. Excellence in teaching, outstanding achievements in scholarship, and substantial contributions in service; or
 - 2. Excellence in teaching, outstanding achievements in service and substantial contributions in scholarship.
- D. In each of the cases above, excellence in teaching is considered the primary qualification for promotion and shall be weighted accordingly.
- E. The required criteria for promotion are found in Appendix A. Candidates must provide evidence for teaching, scholarship, and service as applicable since the last promotion at SSU or since the date of hire if the first promotion (except for provisions identified in Section 14 in this Article).
- F. All applications for promotion submitted by tenure-track or tenured faculty members must adhere to the Promotion and Tenure Timeline as identified in Section 10 of this Article.
- G. The application process for promotion of full-time instructors (non-tenure track) is found in Article 10.

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Section 5. Tenured and Tenure-Track Promotion Application Procedure.

- A. In the event that an eligible tenured or tenure-track faculty member desires to apply for a promotion, he/she shall make application with the Provost by the close of business on the twelfth working day of Fall semester of the year prior to the academic year in which such contract would commence, if granted. The application shall be submitted electronically by the bargaining unit member and be organized and contain the information listed below:
- B. Application Section 1 (limited to 30 pages)
1. A completed promotion application form which is available on the Office of the Provost's web site;
 2. A cover letter which must address:
 - a. the candidate's eligibility for promotion (see Section 2 of this Article) and
 - b. the basis for the candidate's application for promotion (see Section 4 of this Article) and;
 - c. a short summary of any additional information that may be pertinent to the candidate's evaluation;
 3. A detailed and current vita;
 4. A letter of support from the chairperson of the department;
 5. Three (3) additional letters of reference of support from professional and/or academic colleagues
- C. Application Section 2: Teaching (limited to 20 pages)
1. A narrative explaining how the bargaining unit member has met the criteria for excellence in teaching including a list of sources of evidence to be included in the appendix.
 2. A written faculty-developed summary that provides an analysis and discussion of all student evaluations for the past three (3) academic years.
 3. For individuals not holding continuing contract or tenure, a Dean or Department Chairperson's in-class evaluation for each year since the last promotion or time of hire if this is the first promotion.
- D. Application Section 3: Scholarship (if applicable) (limited to 5 pages)

A narrative explaining how the bargaining unit member has met the criteria for outstanding

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or substantial scholarship as applicable, including a list of sources of evidence to be included in the appendix.

E. Application Section 4: Service (if applicable) (limited to 5 pages)

A narrative explaining how the bargaining unit member has met the criteria for outstanding or substantial service as applicable, including a list of sources of evidence to be included in the appendix.

F. Appendix: (no page limit)

1. Sources of evidence for teaching criteria
2. Sources of evidence for scholarship criteria (if applicable)
3. Sources of evidence for service criteria (if applicable)
4. If the candidate is applying for Associate Professor, a copy of the promotion and tenure plan, progress reviews, and pre-tenure and promotion review
5. Original summaries of all student course evaluations from Shawnee State University, including student comments since the last promotion or the entire period of time being reviewed in this application.

Section 6. Committees Involved with Promotion and Tenure.

A. Mentoring Committee

1. A Mentoring Committee shall be established for each tenure track faculty member.
2. The Mentoring Committee shall consist of three (3) tenured members of the faculty member's department and the department chair. If a department does not currently have at least three (3) tenured faculty members, tenured faculty members may be selected by the department chairperson from other departments within Shawnee State, or from another regionally- accredited baccalaureate-granting institution of higher education.
3. Members of the Mentoring Committee serve until the faculty member is awarded promotion and tenure. In the event that a Mentoring Committee member is not able to continue, another tenured faculty member may be appointed to the committee by the department chairperson. Tenured faculty members may serve on more than one Mentoring Committee.

B. Departmental Promotion Screening Committee: The Departmental Promotion Screening Committee (DPSC) is established and only convened each academic year to review and evaluate applications for promotion and/or tenure submitted by the department's eligible candidates. The typical committee structure shall be:

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1. Each department will elect four (4) representatives from the department to serve on the DPSC. At least two (2) of the representatives shall hold the rank of Professor. The remaining representatives shall hold the rank of either Associate Professor or Professor.
2. If a department does not currently have two Professors, Professors may be selected by the department chairperson from other departments within Shawnee State, or with concurrence from the Dean, from another regionally-accredited baccalaureate-granting institution of higher education.
3. The Departmental Promotion Screening Committee (DPSC) will assess the promotion folder and present a summary of the candidate's promotion folder and assessment of whether or not the candidate has met the relevant criteria to the tenured members of the candidate's department.
4. The tenured members of the candidate's department will then vote by secret ballot to recommend or not recommend the candidate for promotion and/or tenure. Candidates may not vote on their own promotion recommendation. In the case of application for Professor only professors in the department shall vote. At least three professors are required for this vote. If a department does not have at least three Professors then additional professors may be selected by the Department Chairperson in consultation with the Dean.
5. The results of the department's tenured faculty vote including comments (which shall be typed verbatim by the Department Secretary) from voting members and the report and assessment from the DPSC will be forwarded to the Dean and the College Promotion Committee. All materials shall be submitted by the date indicated in the Promotion and Tenure timeline found in Section 10 of this Article.

Section 7. College Promotion Committees.

- A. The Departmental Promotion Screening Committees formed by each department within the College shall select one representative and one alternate from among their respective membership to form the College Promotion Committee each academic year.
- B. CPC members will at a minimum, hold the rank being sought by the candidate(s), as such, if any candidate is applying for promotion to professor, all members of the college promotion committee must hold the rank of professor. Should a department not have any professors available or willing to serve, the senior tenured member of the department, not applying for promotion, shall represent the department on the college promotion committee.
- C. The Dean shall convene the CPC by the date indicated in the Promotion and Tenure Timeline found in Section 10. The members of the CPC shall elect a Chair. The Dean will not be a member of the committee and will not be present during committee meetings. The application materials of each candidate will be evaluated by the College Promotion

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Committee from their respective college. The department representative or alternate must be present at the CPC meeting in which a vote is planned. A majority vote of the membership of the CPC is required for the approval or rejection recommendation of a candidate for promotion.

- D. The CPC Chair shall provide a written report and summary of the committee's decision. This report shall be voted on by the committee and signed by the CPC Chair and all members of the committee. Committee member signatures shall indicate that the report represents an accurate summary of the committee's decision. The CPC Chair shall also insure that procedures and criteria as defined in this agreement are adhered to and are equally applied. This report shall be provided to the candidate. The CPC Chair shall also have initial responsibility to insure that candidates are not subject to unlawful discrimination.
- E. The CPC Chair shall submit all promotion materials including results of the CPC vote to recommend approval or rejection of the promotion to the Dean with a copy to the candidate.
- F. The Dean will review and make a recommendation to the Provost.

Section 8. CPC Reconsideration Procedure.

- A. If a candidate has not been recommended for promotion by the College Promotion Committee, he/she shall have the right to request reconsideration of the CPC's decision by written request to the CPC Chair with a copy to the Dean by the timeline identified in Section 10.
- B. The Committee will meet with the candidate to reassess the candidate's application for a promotion. The candidate will be given an opportunity to address deficiencies noted in the CPC's report.
- C. The Committee may request clarification, supporting documentation, or explanation of promotion folder materials from the candidate. The candidate may provide the CPC a written statement as part of their effort to clarify or explain the previously submitted promotion folder materials.
- D. This committee will make its final determination and notify the candidate and the Dean of its final recommendation by the date indicated by the timetable in Section 10.
- E. Grievances shall only be filed after the final determination of the President. Grievances arising from this process may not be based on a disagreement regarding the professional judgment of a candidate's committee or of the college committee's assessment, or the assessment of the CPC Reconsideration regarding the performance of the candidate in the three areas of teaching, scholarship or service as those terms are defined in this agreement. Grievances may be filed alleging a violation of article(s) in this agreement and/or in cases where the President has overturned a positive recommendation of the college committee or appeals committee.

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Section 9. Administrative Review.

- A. Role of the Dean: For each candidate, the Dean will review the promotion folder and all documents provided by the CPC. The Dean may call a meeting to consult with the CPC prior to submitting his/her recommendation and rationale in support or opposition to the promotion to the Provost with a copy to the candidate.
- B. Role of the Provost: For each candidate, the Provost will review the promotion folder and all documents and will submit his/her recommendation in support or opposition to the candidate's request for a promotion. The Provost shall have the responsibility as Chief Academic Officer to insure that the procedures and criteria as defined in this agreement are adhered and are equally applied. The Provost shall also have responsibility to insure that candidates are not subject to unlawful discrimination. The Provost may consult with the Dean and may call a special meeting of the College Promotion Committee prior to making his or her recommendations. Should a candidate not be recommended for promotion by the Provost, after receiving a recommendation for such by the committee, he/she shall be provided with the rationale, in writing, for the denial.
- C. The promotion folder, all documents and the Provost's recommendations will be forwarded to the President no later than the date indicated in Section 10. The president may consult with the Provost and Dean and may call a special meeting of the College Promotion Committee prior to making his/her decision. The President shall have the responsibility as Chief Executive Officer of the University to insure that the procedures and criteria as defined in this Agreement are adhered to and are equally applied. The President shall also have responsibility to insure that candidates are not subject to unlawful discrimination.
- D. The President will present written notification of his/her approval or denial of a promotion to the candidate by the date indicated in Section 10. Should a candidate not be granted a promotion by the President, he/she shall be provided with the rationale, in writing, for the denial.
- E. The President's approval of a candidate's promotion will be forwarded to the Board of Trustees. Upon the approval of the rank of Associate Professor, the President will recommend to the Board of Trustees the awarding of tenure.

Section 10. Promotion and Tenure Timeline for Candidates.

- A. Upon initial appointment to tenure-track status the bargaining unit member shall be issued a one year contract.

During the contract period, the bargaining unit member may only be dismissed for just cause. The bargaining unit member shall be reviewed in accordance with the renewal, promotion and tenure guidelines of this agreement.

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- B. If a decision is made not to renew the contract of a bargaining unit member during the first year of employment, the bargaining unit member shall be provided with a statement of reasons, but the University is not obligated to show cause when deciding not to renew the contract of a bargaining unit member in their first year of appointment. Notice of non-renewal shall be provided by March 15.
- C. Upon renewal of a contract following the first year of appointment, bargaining unit members on tenure-track shall be issued a two year contract.
 - 1. During this period of time the bargaining unit member may be terminated or disciplined only for just cause.
 - 2. In the third year of his or her appointment, the bargaining unit member shall be reviewed in order to determine whether or not adequate progress is being made toward tenure and shall receive notification of the decision from the President of the University by June 1. There are three possible decisions as a result of this review.
 - a. Inadequate progress: The bargaining unit member shall be issued a one year terminal contract and shall be provided with a statement of reasons for that decision.
 - b. Adequate progress: The bargaining unit member shall receive a three year contract.
 - c. Eligible for early tenure: The bargaining unit member who has completed all tenure requirements shall receive a three year contract and is eligible and with the recommendation of the Mentoring Committee, but not required, to apply for promotion and tenure during his/her fourth or fifth year. Regardless of which year a faculty member applies for tenure, a decision not to grant tenure will follow the provisions in Section 3 of this Article.
- D. During their fourth, fifth and sixth years of appointment the bargaining unit member shall only be disciplined or dismissed for just cause as addressed by Article 18.
- E. In the sixth year of appointment the bargaining unit member shall be evaluated for tenure in accordance with the criteria set forth in this Agreement.
 - 1. If a decision is made not to grant tenure the University shall provide a statement of reasons.
 - 2. If the decision not to grant tenure is based on criteria other than teaching, scholarship, and service, then such a decision must adhere to the disciplinary guidelines set forth above.
- F. This timeline depicts the path a candidate will typically follow to achieve promotion in rank and tenure.

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Year 1 of 1-Year Contract	
By September 30	The Dept. Chair will coordinate the establishment of a Mentoring Committee.
By last day of 13 th week of Fall semester	Progress meeting between candidate and Mentoring Committee. During this meeting a draft Promotion and Tenure Plan will be developed. Department Chair sends copy of draft P&T plan to Dean.
On or before February 15	Formal Progress Review of candidate by Mentoring Committee; Chair of Mentoring Committee submits report and recommendation on contract renewal to Dean; Chair of Mentoring Committee provides notice to faculty member of Mentoring committee's recommendation of either a 2-year contract or a probationary 1-year contract, or non-renewal.
By March 1	Dean recommends contract action to Provost
On or before March 15 th	Provost issues Notice of either a 2- year contract, probationary 1-year contract, or non-renewal.
Year 2: Either First year of 2-year contract OR probationary 1-year contract	
By mid-January (2-year contract)	Progress Review with Mentoring Committee; begin development of promotion folder per the P&T Plan
By February 15 (1-year probationary contract)	Formal Progress Review with Mentoring Committee; Chair of Mentoring Committee prepares and reports progress and recommends a 1-year contract or non-renewal to Dean
By March 1 (1-year probationary contract)	Dean reviews all documents; recommends additional 1-year or non-renewal to Provost
On or before March 15 (1-year probationary contract)	Provost reviews all documents; issues decision of additional 1-year contract or non-renewal
Year 3 of employment (2nd year of 2-year contract or 2nd 1-year contract)	
By First week of Spring semester	Candidate submits draft promotion folder to Mentoring Committee; progress meetings as needed between candidate & Mentoring comm.
By March 15	Formal progress review by Mentoring Committee; Mentoring committee forwards draft promotion folder to Dean with recommendation

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	for 3-year contract or 1-year terminal contract and copy to the candidate. The committee will also submit an assessment of whether the candidate is ready to apply for early tenure.
By April 15	Administrative Review by Dean; recommends 3-year contract or 1-year terminal contract and copy to candidate
By June 1	Administrative Review by Provost; decision of 3-year contract or 1-year terminal contract and copy to candidate
Year 4: First year of 3-Year Contract (1st year eligible for early P & T)	
By the last week of Spring Semester	Pre-tenure & Promotion Review: Mentoring Committee reviews candidate's Promotion Folder; no changes to P&T Plan are permitted after this review; copy of the final P&T Plan submitted by Department Chairperson to Dean
Candidates eligible for early tenure who decide to apply this year	Follow tenure and promotion timeline
Year 5: 2nd year of 3 –year contract	
Candidates eligible for early tenure who decide to apply this year	Follow tenure and promotion timeline
Any time	Additional progress meetings with Mentoring Committee as desired by candidate
Year 6: 3rd Year of 3 year contract	
Follow promotion and tenure timeline Promotion and Tenure Decision made by June 1	
Year 7: First Day of Fall Semester	
Promotion or Tenure in effect, OR serving 1 year, Non-Renewable Contract	

G. A tenure track faculty member experiencing a personal interruption during the timeline for tenure may request a one-year extension of the timeline. The request should be made in writing to the appropriate Dean. The Dean will consult with the Mentoring Committee and the department chair. If the extension is approved by the Dean, the Mentoring Committee will develop a modified timeline for that faculty member and submit it to the Dean.

Section 11. Summary of Promotion and Tenure Event Calendar.

End of Business on 12 th day of Fall Semester	Application for Promotion Due
Fourth week of Fall Semester	Promotion Folders available for review and Departmental Promotion Screening Committee(s) elected and assembled
Between fourth and ninth week	DPSC review promotion folders and develop summaries Forwarded to department faculty for vote

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By Tenth Week of Fall Semester	Departmental vote is taken. Results are forwarded to the Dean review by the College Promotion Committee
Eleventh Week of Fall Semester	Dean convenes College Promotion Committee(s)
First Week of Spring Semester	Candidates notified by the College Promotion Committee of CPC recommendation
Third Week of Spring Semester	Last day to request reconsideration of promotion denial by the College Promotion Committee
Sixth Week of Spring Semester	CPC documents forwarded to the Dean, with copy to candidate, Dean reviews and forwards recommendation to the Provost.
Eighth Week of Spring Semester	Provost forwards documents and recommendation to the President
By June 1	President's decision on promotion; notify candidate

Material is due by Friday at the close of business on the week(s) mentioned above.

In cases of conflict between this timetable and other dates in the Article, the dates on the timetable take precedence.

Section 12. Promotion and Tenure Process Details.

A. Formal Progress Reviews

Formal progress reviews are face-to-face meetings between the faculty member and the Mentoring Committee. The purpose of the formal progress review is to develop a written evaluation of the faculty member's progress-to-date as compared to the promotion and tenure plan. Changes may be made to the promotion and tenure plan until the plan is finalized in year 4. Written summary of these reviews will be provided to the faculty member for inclusion in his/her promotion folder.

B. Probationary Contract (1-year)

1. A bargaining unit member who receives a 1-year probationary contract shall work with the Mentoring Committee to correct weaknesses that were identified in year 1.
2. A formal progress review with the Mentoring Committee must occur by February 15. The timeline for the review and recommendation for contract renewal or non-renewal as identified in Section 10, Promotion and Tenure Timeline will be followed. The bargaining unit member will be eligible for an additional 1-year contract. This will be

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considered the 3rd year of employment that places the bargaining unit on the normal path for promotion and tenure.

C. Pre-Tenure and Promotion Review

The pre-tenure and promotion review is conducted during the first year of the faculty member's 3-year contract (4th year employment as Shawnee State faculty member). Its purpose is to complete a summative evaluation of the faculty member's progress to date and to establish the final P&T Plan, incorporating the results of the summative evaluation. The department chairperson is responsible to provide the results of the pre-tenure and promotion review to the Dean. No changes may be made to this final promotion and tenure plan after the pre-tenure and promotion review. The pre-tenure and promotion review will be provided to the faculty member for inclusion in his/her promotion folder.

D. In Year 6, the candidate submits the promotion & tenure folder containing the materials identified in Section 5 of this Article. The candidate will receive notice of the decision related to the award or denial of promotion and/or tenure by June 1.

E. Year 7: promotion in effect and notice of Board of Trustee award of tenure received or serving 1-year terminal contract.

Section 13. Non-renewal.

A. The University is not obligated to show cause in the decision to not renew the contract of a tenure track faculty member in their first year or in the 2nd year of employment if on a one-year probationary contract.

B. In the third year of employment, the tenure track bargaining unit member shall be reviewed in order to determine whether or not adequate progress is being made toward tenure and shall receive notification of the decision from the Provost by June 1.

1. If the Provost's decision not to renew the contract of the bargaining unit member is based on a finding of inadequate progress from the mentoring committee, the bargaining unit member shall be issued a 1-year terminal contract and shall be provided a statement of reasons for that decision. If the decision is based on other considerations the bargaining unit member shall be provided with a statement of reasons but the university shall not be obligated to demonstrate cause.

2. If a decision is made to renew the contract of the bargaining unit member, the bargaining unit member shall receive a 3-year contract.

C. In the sixth (6th) year of employment

1. If the candidate is not granted promotion and tenure, the Provost shall issue a 1-year terminal contract. If non-renewal is based upon the areas of teaching, scholarship, and / or service the University does not have to demonstrate just cause.

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2. If the decision for non-renewal is based on criteria other than teaching, scholarship, and service, then such a decision must adhere to the disciplinary guidelines set forth in Article 18.
- D. Notice of Non-renewal. Notice of non-renewal for any reason shall be issued via:
1. A personally-delivered document, and/or
 2. By certified U.S. mail to the faculty member's last address provided by the member for payroll purposes.
- E. The University's obligation to serve notice is met if the date of personal delivery, or the postmarked date of mailing, is on or before March 15 for non-renewals of faculty in their first year or probationary year or June 1 for faculty in their third year or after a decision not to award tenure.

Section 14. Transitional Path to Promotion and Tenure.

- A. Bargaining unit members holding the rank of Assistant Professors as of August 2015 with a hire date prior to August 20, 2012.
1. Eligibility for promotion to Associate Professor and tenured status
 - a. All bargaining unit members covered in this section are eligible for promotion to Associate Professor and tenure six (6) years after their initial date of hire with the recommendation of the assigned mentor or department chairperson.
 - b. Rank at time of hire or time in the Assistant Professor rank will not be considered in determining eligibility. This section shall take precedence over the eligibility timelines in Section 10 of this Article.
 - c. Application for promotion and tenure may be made during the bargaining unit member's sixth year of service so that promotion and tenure (if granted) will occur on the first day of the fall semester of the bargaining unit member's seventh year of service.
 - d. Bargaining unit members covered in this section are not required to apply for promotion and tenure at the first date of eligibility. They may apply at any time after becoming eligible according to the academic year schedule found in Section 11.
 - e. Bargaining unit members holding continuing contract who do not apply for promotion and tenure may continue on continuing contract status and will retain their current rank of Assistant Professor.
 - f. Those bargaining unit members not holding continuing contract who do not apply for promotion and tenure may continue as tenure track employees. They will be

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issued a three-year contract. Upon completion of three-years in the rank of Assistant Professor, these bargaining unit members may elect to apply for early tenure as identified in Section 3.

2. Promotion and tenure process, timeline, and criteria
 - a. All bargaining unit members covered in this Section who apply for promotion to Associate Professor and tenure will follow the application process in Section 5.
 - b. All bargaining unit members covered in this Section who apply for promotion to Associate Professor and tenure will be evaluated based on all of their activities since the time of hire regardless of rank at hire or time as an assistant professor.
 - c. All bargaining unit members covered in this Section who apply for promotion to Associate Professor and tenure will be evaluated using the promotion criteria established by this Agreement.

B. Assistant Professors hired between August 20, 2012 and January 1, 2013.

1. Assistant Professors will be permitted to apply for a 1-year extension to the tenure track timeline in order to have adequate time to prepare a promotion folder for the application for promotion to Associate Professor and eligibility for tenure.
2. The Assistant Professors may, instead of applying for a 1-year extension, elect to apply for early tenure as identified in Section 3, or follow the Promotion and Tenure Timeline in Section 10.
3. If the faculty member wants a one year extension, he/she must apply in writing to the Dean by March 15, 2016.

C. Bargaining unit members holding the rank of Instructor or Senior Instructor as of August 2015 with a hire date prior to August 20, 2012.

1. Eligibility for promotion
 - a. Bargaining unit members covered in this section are considered to be tenure track status and are eligible for promotion to the Senior Instructor or Assistant Professor three (3) years after their initial date of hire.
 - b. Application for promotion may be made during the bargaining unit member's third year of service so that promotion will occur on the first day of Fall semester of the bargaining unit member's fourth year of service with recommendations of their designated mentor or department chairperson.
 - c. Bargaining unit members covered in this section are not required to apply for promotion at the first date of eligibility. They may apply at any time after becoming eligible following the timeline identified in Section 11.

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- d. Bargaining unit members holding continuing contract status who do not apply for promotion when they become eligible may continue on continuing contract status.
 - e. Bargaining unit members not holding continuing contract who do not apply for promotion when they become eligible will be issued three year contracts
2. Promotion and tenure process, timeline, and criteria
- a. All bargaining unit members covered in this section who apply for promotion will follow the application process and timeline in this Agreement.
 - b. All bargaining unit members covered in this section who apply for promotion will be evaluated based on all of their activities since the time of hire regardless of rank at hire or time in current rank.
 - c. All bargaining unit members covered in this section who apply for promotion will be evaluated using the promotion criteria in this Agreement.
 - d. If promotion to Assistant Professor is granted, the bargaining unit member may elect to apply for early tenure as identified in Section 3.

Section 15. Post Tenure Review.

A. Definitions

1. A post tenure review (PTR) is not discipline. Its focus is to be on supporting excellence in teaching by offering an alternative pathway to address identified teaching deficiencies and provide opportunities for improvement in teaching skills. Bargaining unit members who have been granted tenure or continuing contract shall continue to be responsible for maintaining competent and effective performance in teaching
2. In cases of gross negligence of duties, incompetence in job performance, or a significant failure to meet obligations to the University the University may initiate corrective action through the procedures of Article 18 without utilization of the post tenure review procedures. The PTR process is not an alternative to discipline in accordance with Article 18.

B. Trigger

A PTR can only be triggered by documented deficiencies in teaching. Deficiency in teaching is evidenced by repeated student complaints about grading policies and/or teaching performance which are found to have merit, or student evaluations of a tenured or continuing contract bargaining unit member indicate a decline in teaching effectiveness over two or more consecutive semesters. If either of these conditions is met, the Dean may proceed as indicated in par. C.

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C. Prior to initiation of PTR:

1. If the Dean believes a faculty member is deficient in teaching as defined in B. above, the Dean shall notify the bargaining unit member of these perceived deficiencies and call a meeting with the faculty member.
2. At this meeting, the bargaining unit member shall have an opportunity to provide an explanation or rebut allegations of deficient job performance
3. If, after listening to the faculty member's explanation of the situation, the Dean still believes there is a deficiency, he/she shall counsel the faculty member that improvement is needed. The Dean and faculty member will develop an Action Plan to demonstrate teaching improvement.
4. If after one full semester, the Dean believes the faculty member has not improved, based on the Action Plan, a PTR may be initiated by written notification to the bargaining unit member and the Department Chair.
5. The notice must include records of the counseling and all evidence of the perceived deficiency.

D. PTR is conducted by the Mentoring Committee

1. Upon receipt of a PTR notice, the department chair shall reconvene the bargaining unit member's original mentoring committee within 10 working days. If the bargaining unit member did not have a mentoring committee or former members of that committee are no longer at the University or willing to serve, the Department Chair shall follow the guidelines in Section 6. A. of this Article for forming a Mentoring Committee.
2. The mentoring committee shall review the information provided by the Dean and schedule a conference with the bargaining unit member within ten (10) working days.
3. The mentoring committee shall determine whether the faculty member has met expectations as defined in the criteria in this section. If the committee decides that it needs more information to make such a determination, the committee shall ask the faculty member to prepare a mini-portfolio showing how he/she meets the criteria in this section. Such a portfolio shall be submitted to the committee within one month of the request. One representative of the Committee may conduct in-class evaluations with prior notice.
4. If the mentoring committee determines the faculty member has met expectations and no further action is needed, the committee shall forward that finding to the Dean in writing.
5. If the mentoring committee determines the faculty member has not met expectations and/or further action is needed, the committee shall:

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- a. Develop an appropriate plan for improvement and forward it to the Dean and department chair within one month of the initial meeting with the bargaining unit member or the receipt of the Portfolio. Development of this plan may require additional meetings of the mentoring committee and the bargaining unit member.
- b. Progress on the plan shall be reviewed in the following academic year or mutually agreed upon timeframe by the faculty member, the mentoring committee, and Dean.
- c. If the mentoring committee or Dean determines that satisfactory progress is not being made, as determined by the improvement plan, the Dean may initiate the procedures for formal action as determined by Article 18.

E. PTR criteria

The standard for review shall be whether the bargaining unit member meets the criteria for teaching excellence found in the current Agreement (Appendix A).

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ARTICLE 12. WORKLOAD AND COURSE LOAD RESPONSIBILITIES

Section 1. Faculty Appointment.

- A. A faculty appointment shall typically consist of the fall and spring semesters, from the first day of the term (as identified by the academic calendar or as otherwise set forth in this Agreement) through a bargaining unit member's regularly scheduled final examinations and the submission of grades.
- B. Upon approval by the Dean for programs with required curricular offerings in the summer, the bargaining unit member appointment may consist of spring-summer semesters or summer-fall semesters for the academic year appointment.

Section 2. Teaching as a Part of Workload.

- A. Shawnee State University is largely an undergraduate institution with some graduate level programs. The University recognizes that classroom hours are a significant component of faculty workload. Besides classroom hours, faculty workload also includes classroom preparation, scholarship/research, and/or service.
 - 1. The normal academic year classroom teaching load for tenured, continuing contract, and tenure-track bargaining unit members teaching on the semester system is 24 contractual hours. During the academic year, no tenured, continuing contract or tenure-track bargaining unit member shall be assigned a workload beyond fifteen (15) contractual hours in a particular semester without his/her permission.
 - 2. As an undergraduate institution with limited graduate programs, the University's teaching load expected of the tenured, continuing contract and tenure-track bargaining unit members should represent 70-80% of their total workload except for departments with master's degree programs.
 - 3. Faculty workload should also include scholarship, and/or service as defined in Article 11.
 - 4. The normal academic year classroom teaching load for non-tenure-track bargaining unit members (full-time instructors – FTI/ NTT) on the semester system is 30 contractual hours. During the academic year, no FTI/NTT faculty member shall be assigned a workload beyond eighteen (18) contractual hours in a particular semester without his/her permission.
 - 5. Teaching load for FTIs/NTTs shall represent up to 90% of their total workload. The remaining time shall be dedicated to service in the form of committee meetings, scheduled office hours, etc.
- B. Workload Equivalencies
 - 1. Contractual Hour: One contractual hour is earned for each fifty minutes of class time.

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For courses involving activities other than lecture hours, contractual hours shall be calculated as identified below. The number of students shall be calculated by the Registrar's official enrollment on the first Monday after the first Tuesday of the semester.

2. Remote Direct Supervision: These courses require the instructor to be present at all times the student is present at an off-campus training site, e.g. nursing clinical instruction.
 - a. Contractual hours shall equal 0.75 instructional hours.
 - b. Any faculty member assigned to a remote direct supervision site for a minimum of six (6) hours in a specific day may request the department chairperson with notice to the Dean to approve a portion of their office hours at the remote site.
3. Remote Indirect Supervision: These courses require faculty to be present at an off-campus training site with the student on a regular scheduled basis which may include activities such as preceptor training, student assessment, clinical instruction, intervention (e.g., occupational therapy clinical instruction, physical therapy clinical instruction, athletic training clinical instruction, etc.).
 - a. No bargaining unit member shall be required to accept additional responsibilities beyond the assigned remote indirect supervision unless agreed. Additional responsibilities will be reimbursed at a rate determined by contractual definition of remote direct or indirect supervision.
 - b. Remote indirect supervision contractual hours shall be equal to $0.10 \times \text{course credit hours of the clinical lab(s) under supervision} \times \text{number of students}$.
4. Indirect Supervision: These courses require regular, ongoing communication with the training site administration and/or preceptor staff, but do not require a regular, ongoing physical presence at the training site. Indirect supervision contractual hours shall be equal to $0.05 \times \text{course credit hours of the clinical lab(s) under supervision} \times \text{number of students}$.
5. Direct on Campus Supervision: These courses require the instructor to be present at all times the student is present in the laboratory or clinical setting (e.g., Chemistry lab).
 - a. Contractual hours shall equal 0.75 instructional hours.
6. Undergraduate Research: These courses require significant faculty and student interaction in a student initiated laboratory research project. These courses must be recognized and approved as undergraduate research courses in accordance with the University's course approval process. Contractual hours shall be equal to $0.4 \times \text{course credit hours} \times \text{number of students}$, but not to exceed 3 contractual hours per semester.
7. Physical Education Activity Courses: Contractual hours shall be equal to 0.67

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instructional hours.

8. Senior Project Courses: Contractual hours shall be equal to $0.1 \times$ course credit hours \times number of students.
9. Teacher Education Field Supervision Workload: Students are required to complete a field placement in the P-12 schools as part of some of their college courses.
 - a. The number of required field hours for students and the number of faculty observations varies course to course. The faculty workload credit to be awarded reflects this variation.
 - b. The chart found in Appendix B constitutes the workload credit for field observations as designated by course. This workload credit is in addition to the scheduled course credit indicated on the student schedule of classes.
10. Off-Campus Site Coordination/Clinical Internship: Faculty who plan and coordinate student placement at training sites shall be compensated in accordance with this Article and/or Article 13.
11. Student Internships (non-clinical, credit): Student internships are defined as credit-bearing, practical work experiences that are related to a student's major area of study. The workload of bargaining unit members who serve as internship advisors will be designated as indirect supervision and contractual hours shall be equal to $0.05 \times$ course credit hours \times number of students.

For student internship courses where the internship is a component of a normal classroom experience, the bargaining unit member's workload shall be one (1) contractual hour for each 50 minutes of class time.

12. Concurrent Instruction: Classes scheduled with more than one course or section in the same room with the same instructor at the same time, with the approval of the bargaining unit member, Department Chair, and the Dean, shall be calculated as if the instructor was teaching one section of one course and be considered one course preparation.
13. Individualized Instruction: These performing and studio arts courses require the faculty member to meet individually with students.

Contractual hours shall be equal to $1/3 \times$ course credit hours \times number of students (These courses require significant time). This is not to be confused with course credit by arrangement (see below).

14. Course credit by arrangement: With Dean approval, a bargaining unit member may teach a course to an individual student by arrangement.

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- a. Compensation for undergraduate courses shall be \$150 per credit hour and \$225 per credit hour for graduate courses. No bargaining unit member shall be required to teach such a course.
 - b. Such courses by arrangement shall be taught only by bargaining unit members. Exceptions may be made in such cases as bargaining unit member decline the opportunity or lacks qualifications in the relevant area of specialization.
 - c. Such courses are usually offered to meet the emergency needs of students and are not part of a faculty member's workload.
15. Emergency Course Offerings of low-enrolled, required courses: With the Chairperson's recommendation and the Dean's approval, a bargaining unit member may teach a course to an individual or very low number of students when the course is required for graduation, not scheduled for the following term, but the regularly scheduled course would be cancelled by the University due to enrollment of three (3) or fewer students. In such cases, workload will equal $1/3 \times$ contractual hours. No bargaining unit member shall be required to teach such a course. This provision is to be utilized only in exceptional cases when a student would otherwise be required to take a course credit by arrangement in order to complete his/her degree requirements.

Section 3. Graduate Programs.

- A. As Shawnee State University continues to add new graduate programs, matters will arise that have not been anticipated in this collectively bargained agreement. The parties agree that in such instances, the issues will be addressed in a collaborative manner utilizing the Graduate Council and the appropriate governance and Association processes (e.g. EPCC, UFS, SEA, and administrative review). The MOU process will be utilized to address such issues.
- B. The University recognizes and supports the Graduate Council created through the governance process.
- C. Graduate programs will have a program director in accordance with Article 13.
- D. Bargaining unit members must apply for graduate faculty status in accordance with the Graduate Council Manual.
- E. Graduate Course Contractual Hours
 1. The normal academic year work load for graduate faculty is 24 contractual hours.
 2. Graduate Lecture Courses: Contractual hours shall be equal to $4/3 \times$ course credit hours.
 3. Individual Student Graduate Research: Contractual hours shall be equal to $1/3 \times$ credit

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- hours x number of students, but not to exceed 4 students per semester.
4. Group Student Graduate Research: Contractual hours shall be equal to 1 x course credit hours x number of groups but not to exceed 4 groups per semester. Groups shall be a minimum of 4 students.
 5. Graduate Lab Courses: Contractual hours shall be equal to 1 x instructional hours.
 6. Field Supervision: Fieldwork credit will be determined as follows:
 - a. Programmatic Foundations & Practicum courses: Contractual hours shall be equal to 0.26 hours for the course.
 - b. Action Research Courses: Contractual hours shall be equal to 0.52 hours for the course.
 - c. Methods Courses: Contractual hours shall be equal to 4/3 hours for the first 10 students plus an additional 0.11 hours for each additional student above 10.
 - d. Student teaching for program courses: Contractual hours shall be equal to 4/3 hours x number of students.
 7. Graduate/Undergraduate Concurrent Instruction with a Majority of Undergraduate Students: Classes scheduled with one graduate and one undergraduate course in the same room with the same instructor at the same time shall be calculated as if the instructor was teaching one undergraduate section of one course and that instructor shall also receive 0.11 x credit hours x number of graduate students. Graduate students will be engaged in work considerably beyond the scope of that expected of undergraduates in the course.
 8. Graduate/Undergraduate Concurrent Instruction with an Equal Number or Majority of Graduate Students: When classes are scheduled with one graduate and one undergraduate course in the same room with the same instructor at the same time, workload shall be calculated as if the instructor was teaching one graduate section.
 9. Non-graduate bargaining unit members must apply for and be granted associate (temporary) graduate status by the Graduate Council in order to teach graduate courses, and are limited to six (6) credit hours of graduate teaching per year.
 10. Graduate Scholarship by graduate bargaining unit members is considered part of the workload and shall not be considered for additional compensation.
 11. Graduate bargaining unit members will submit a report of their annual scholarship activity to the Graduate Council through use of the faculty annual self-evaluation.
 12. During the academic year, no graduate bargaining unit members shall be assigned a

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workload beyond fifteen (15) contractual hours in a particular term without his/her permission.

Section 4. Reductions from a Full-time Teaching Load.

- A. A reduction in teaching workload or the payment of a stipend maybe recommended by the Dean and granted by the Provost for one or more of the following activities:
1. Administering Developmental Education programming or the University General Education Program,
 2. Chairing major University, Governance and SEA committees,
 3. Responsibility for new programs or major curriculum revisions,
 4. Scholarly pursuits, including research, publication, and serving as an officer of a national, discipline-related professional organization,
 5. Participating in special assignments related to teaching, research, artistic creativity and performance, or professionally-related public/community service,
 6. Serving as designated student advisor for a program or Department,
 7. Formalizing and coordinating majors within multidisciplinary departments,
 8. Managing major grant-funded projects,
 9. Faculty development directly related to the improvement of teaching and learning,
 10. Serving in other academic leadership roles as approved by the Provost.
- B. An FTI may request release time as approved by the Department Chair, Dean and Provost as set forth in this section.
- C. Any release time approved for items above shall be assigned a contractual hour value for determination of faculty load or for possible overload compensation. However, faculty approved for a reduced workload under the provisions of this Article shall be assigned an overload during the same academic year only under exceptional circumstances and only with the approval of the Dean.

Section 5. Office Hours as Part of Workload.

- A. All bargaining unit members (includes full-time instructors) shall be required to maintain at least four (4) office hours scheduled over three (3) days per week unless excused by the Dean. Such approval shall not be unreasonably denied. Such office hours shall be scheduled at a time convenient for students.

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- B. If the bargaining unit member is unable to meet his/her office hour, he/she must notify the department chairperson and either reschedule or submit the Leave of Absence form found on the Department of Human Resources web site as applicable. Doing neither option may result in disciplinary action in accordance with Article 18.
- C. Office hours begin the first day of each term and end the last day of classes and must be clearly posted on the bargaining unit member's door by the third day of classes and shall be included in their course syllabus.

Section 6. Academic Advising as Part of Workload.

Tenured, tenure-track and continuing contract faculty are responsible for academic advising, including assisting students in scheduling the appropriate courses and completing an annual survey related to advising developed by a joint committee including deans, SEA and UFS. Bargaining unit members shall be available by appointment during office hours or for assistance at the instructor's and the student's mutual convenience.

- A. Full-time instructors (FTIs) may be assigned advising duties as set forth herein and approved by the department chairs, unless such assignment may result in release time that requires Provost approval.
- B. No bargaining unit member (includes FTIs when assigned) shall be assigned more than thirty (30) students without the faculty member's approval (see par. I below re: compensation for advisees above 30).
- C. When a student is assigned more than one advisor, the workload will be divided proportionally among the advisors.
- D. The University, through the Chairperson or Program Director, is responsible for assigning faculty to advise students and shall provide all pertinent information necessary to carry out this function.
- E. Bargaining unit members are to be assigned students in the faculty members' areas of teaching specialization(s) whenever possible (this provision shall not be used to avoid compensation related to advising).
- F. Pay for any advising function that takes place outside the contract year shall be \$45 per hour. Any such advising assignment shall be strictly voluntary and shall be rotated equitably within each academic program or department. These assignments must receive prior approval from the Dean.

(Exempted from A through F above are bargaining unit members who are receiving either release time or overload pay for advising purposes).

- G. Bargaining unit members who are receiving release time or overload pay for advising are required to attend, upon University request, all of the early and late registration sessions,

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and to be available for student advising beyond the office hours required of all bargaining unit members. Bargaining unit members who are receiving release time for advising will arrange with the Dean, subject to the approval of the Provost, the extra office hours required to advise the expected number of students in that major, program, division, or college.

- H. Only graduate faculty may engage in graduate student advising and directing graduate research and chair thesis or master's project committees.
- I. Bargaining unit members with more than thirty (30) advisees assigned fall and/or spring semester shall be compensated at \$10 for each advisee above thirty (30) and \$17.50 for each advisee above forty-five (45) per semester.
 - 1. The number of advisees will be determined as of the first Monday after the first Tuesday of fall and spring semesters. Every effort will be made to remit payment by the next following full pay period.
 - 2. The compensation for more than thirty (30) advisees shall not be authorized until all tenured, tenure-track and continuing contract faculty members of the program/discipline have been assigned thirty (30) advisees.

Section 7. Committee Service and University Meetings as Part of Workload.

Tenured, tenure-track and continuing contract faculty are expected to participate on University and Departmental committees and in program accreditation preparation and compliance in accredited or accreditation-seeking programs. Non-tenured faculty are encouraged to participate when appropriate.

Section 8. Course Responsibilities and Other Classes.

- A. Bargaining unit members who voluntarily team-teach a course shall share the total contractual-hour load for the course proportionally. This credit shared load shall not exceed the contractual-hour load normally assigned for the course. Team-taught courses shall be approved by the Dean. No faculty member shall be assigned a team-taught course without his/her permission.
- B. Each bargaining unit member shall be required to develop a course syllabus for each course taught during each term that reflects the course description contained in the University catalog. The course syllabus shall be distributed to students by the faculty member during the first week of classes via the University's course management system or paper copies (if paper copy, provide an electronic copy to the department secretary). The course syllabus shall include, but not be limited to, the course objectives, faculty office hours, grading procedure, reading requirements, and the University's ADA statement. The ADA statement may be obtained from the Dean and/or Provost offices. Faculty members are encouraged to post current term course syllabi on the University's course management system.

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- C. A faculty member is permitted to make alternative arrangements for a student who is enrolled in a scheduled class if he/she so desires. This is not considered a “course credit by arrangement” as identified in Section 2 B. 14 of this Article. The bargaining unit member will earn the workload contractual hours allotted to that class and it is treated as part of his/her regular assigned load.
- D. In order to meet federal financial aid regulations regarding class attendance which is addressed in 34 CFR § 668.21 *et seq.* faculty must, at the end of each term, report (available from the Registrar) the last date of class participation of those students who had stopped attending classes and received a failing grade.
- E. Student Progress Report: In an effort to improve SSU’s student retention and increase the rates of successful course completion and degree attainment, bargaining unit members will submit to the Registrar a student progress report (similar to the non-attendance report) from the 4th to the 6th week period of each semester for each enrolled student.

Section 9. Departures from Regular Class Schedules.

- A. A bargaining unit member shall obtain prior approval from the appropriate Chairperson, who will provide notice to the Dean for departures from the class schedule. If the Department Chairperson is not available, the Dean or the Provost can give approval, for the following:
 - 1. Not holding any regularly scheduled class, final examination, or evaluation.
 - 2. Holding any class off-campus or at a time or location different from the regularly scheduled class meeting.
 - 3. Moving a class from the regularly scheduled location.
 - 4. Using a substitute or proctor for any assigned class meeting or examination.
- B. Failure to comply with any provision of this section may result in disciplinary action, including appropriate reduction(s) in the faculty member's salary. Issues related to use of sick leave, unexpected emergencies or other forms of leave shall be addressed in accordance with Article 17.

Section 10. Class Schedules and Schedule Changes.

- A. The University retains the right to schedule courses in accordance with programmatic needs and shall retain final authority over class schedules.
- B. Department Chairs are expected to consult with bargaining unit members in the program area in order to identify the bargaining unit members’ preferences prior to recommending class schedules to the Dean for approval.

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- C. Class schedules shall be assigned equitably among bargaining unit members taking into consideration preference and based upon the academic discipline or subject area, required credentials, and experience, as determined by the department chairperson and/or program director based on departmental needs and priorities as established through Department Procedures. When a tenured or continuing contract bargaining unit member has developed and taught a course as part of their regular schedule for three or more years the bargaining unit member will have priority to teach that course. In cases where there are documented deficiencies in teaching this course or where program credential requirements may make this impractical, this priority will not apply.
- D. Bargaining unit members shall be provided with a copy of the class schedule by the chairperson, including clinical and laboratory assignments as well as class hour(s) and days, at least four (4) weeks prior to commencement of each term, including summer. The University shall not subsequently change the faculty member's schedule unless program needs or enrollments require such action. Necessary changes shall be discussed with the affected faculty member prior to any change being made.
- E. Bargaining unit members with their consent may be assigned to teach in their area of specialization outside their assigned department or program upon approval of the respective departments and/or programs.
- F. During any one day, no more than eight hours shall separate the beginning of a faculty member's first course assignment (classroom, laboratory, or clinic) and the end of his/her last course assignment unless the faculty member agrees to accept the extended day.
- G. A faculty member's other University responsibilities, such as committee meetings, administrative duties, and office hours, shall normally be confined within this eight-hour period. In the case of a class ending after 8 p.m., the faculty member shall not be assigned a class before 10 a.m. on the following day unless the faculty member chooses to accept the assignment.
- H. Bargaining unit members may be assigned classes within the workday (8 a.m. to 10 p.m.) and the total work week (Monday through Friday). Classes may be scheduled on Saturdays and Sundays. Faculty member may elect not to accept such weekend assignments.
- I. Bargaining unit members have preference over temporary and part-time faculty in the selection of scheduled courses in their area of teaching specialization up to three (3) weeks prior to the beginning of each term. Courses shall first be offered to bargaining unit members prior to offering courses to temporary and part-time faculty. Such action will not result in overload.

Section 11. Faculty/Student Ratios.

There shall be a student/faculty ratio of no more than the following:

- A. Health Science clinics/labs shall have a student/faculty ratio of no more than the current

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published accreditation standards for the individual program.

- B. Each faculty member teaching the courses listed below shall not exceed an average faculty/student ratio of 1:20 for all composition courses taught in one term.
 - 1. This restriction applies to ENGL1101, 1102, 1105, and COMM1121 (or their equivalent) as determined by the Registrar's 14-day class list.
 - 2. Emergency provision. In an emergency situation within one (1) week of the start of classes where there exists five (5) or fewer students who need an English comp class and no seats are available (because of the 1:20 ratio limit), one additional student may be added per Section with the approval of the faculty member, department chair, and approval of the Provost.
- C. Any course taught in the General Education Program flagged as writing intensive shall not exceed a faculty student ratio of 1:30.
- D. Any course taught in the General Education Program flagged as Senior Seminar shall not exceed a faculty/student ratio of 1:16.
- E. Any online or blended learning courses shall not exceed a faculty/student ratio of 1:26 unless agreed to by the faculty member teaching the course, and the Provost.

Section 12. Off-Campus Classes.

- A. Off-campus class assignment opportunities may be offered to bargaining unit members. No faculty may be involuntarily assigned to an off-campus class except as specified in this Section.
- B. With the exception of the clinical/field assignments in the programs in Health Sciences, field-based instruction in Teacher Education, and those referenced in paragraph C of this section, a faculty member may choose not to teach an off-campus class, and shall not be required to teach off-campus. There shall be no reprisals for refusing to teach off-campus.
- C. The University shall make a good faith effort to first seek faculty volunteers for off-campus teaching. No faculty member will be assigned to any correctional facility. No faculty member may be involuntarily assigned more than one course in any academic year. College credit courses will be scheduled at off campus sites based on normal academic procedures, which include departmental oversight.
- D. If the faculty member has an assignment at any off-campus facility, the University will pay mileage above the normal round-trip commute miles between the faculty member's home and the Shawnee main campus.

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Section 13. Meeting Times and Department Support.

- A. At least one (1) full-time laboratory technician shall be assigned to the Department of Natural Sciences.
- B. During the weeks of the Fall and Spring semesters when regular University classes are being held, every effort will be made not to assign bargaining unit members to classes scheduled between the hours of 4 P.M. and 5 P.M. on Mondays and Wednesdays. This block of time shall be allotted for the purpose of holding meetings.
- C. The University shall furnish all academic departments with administrative support.

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ARTICLE 13. SUPPLEMENTAL ASSIGNMENTS

Academic Departments are those departments recognized and approved by the Board of Trustees. For purposes of this Article, bargaining unit members refer to those faculty holding contracts in accordance with Article 5.

Administrative and coordination duties are assigned to bargaining unit members through supplemental contracts and may include the roles of: department chairpersons, academic program directors, graduate program directors, academic program coordinators, clinical coordinators, and other directors (non-departmental).

Section 1. General Information - Department Chairpersons.

A. Department Chairpersons shall be awarded a twelve (12) month supplemental contract in the amount commensurate with experience as a department chairperson based on the following schedule:

First 3-year term as Department Chairperson	\$22,500/year
Second 3-year term as Department Chairperson	\$25,000/year
Third 3-year term as Department Chairperson	\$27,500/year
Remaining 3-year terms as Department Chairperson	\$30,000/year

B. Department Chairpersons serving in AY2015-16 who served in that role in AY2014-15 and whose academic year and summer supplemental Department Chairperson contracts exceeded their placement on the above payment schedule will continue to be paid the same amount as in AY2014-15. This amount will continue to be paid until such time as the individual's years of service as Department Chairperson places him/her at a higher amount per the above payment schedule.

C. Progression through the above payment schedule will continue as long as there is not a break longer than two terms.

D. This supplemental contract will terminate upon the incumbent's departure from the position of department chairperson.

E. Department Chairpersons are expected to be available on campus and to perform department chairperson responsibilities at least 20 hours per week during normal business hours (7:30 a.m. – 6:30 p.m.), Monday through Friday, throughout the 12-month contract period, including Winter break. A schedule shall be established for each semester with prior approval of the Dean. These 20 hours shall be in addition to teaching (class, clinical, or lab time), office hours, or other regular faculty responsibilities. Department Chairpersons are not required to be on campus during spring break. Time away from campus on approved University or departmental business will be considered work time. Summer semester schedules shall be approved in advance by the Dean.

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- F. The department chairperson shall receive a course load reduction of twelve (12) contractual hours per academic year.
- G. No individual may receive more than one (1) department chairperson supplemental contract in any academic year.
- H. Department Chairpersons may serve as an academic program director or graduate program director at the higher supplemental contract amount for which they are eligible and will receive an additional stipend of \$2,500 per year for their service in two roles.
- I. This supplemental contract shall not be used in the computation of overload or other compensation.
- J. The department chairperson may also teach summer courses and receive additional compensation as provided in Article 15. Time spent teaching is not included in the twenty (20) hours per week on campus.
- K. At the beginning of each fall semester, department chairpersons will be provided eighty (80) hours of available leave time to be available for the 12-month contract period (prorated if appointment is mid-year).
 - 1. This leave does not accrue and any remaining unused leave balance shall not carry over from year to year. Leave requires prior approval by the Dean and may be used during any break or when classes are not in session (excludes official University holidays and spring break).
 - 2. This leave may be scheduled throughout the twelve-month contract period except that during the summer semester department chairpersons are expected to be present for new-student orientation dates and leave will typically not exceed two (2) consecutive weeks. Time away from campus should be scheduled to avoid conflict with assigned teaching. Requests for additional consecutive vacation requires prior approval from the Dean.

Section 2. Department Chairperson's Responsibilities.

The department chairperson holds faculty rank and status and is a member of the bargaining unit. He/she shall serve as a liaison between faculty and the administration and responsible for the following duties:

- A. Coordinate and assist with the selection of department faculty; assist with the orientation of new department faculty; provide the Dean with feedback on instructional performance of department non-tenured (excludes continuing contract) faculty;
- B. Perform duties related to the promotion and tenure process as identified in Article 11;
- C. Generate initial proposed course offerings that respond to the scheduling needs of

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prospective and new students; the scheduling requests of faculty, and submits course schedule recommendations to the Dean;

- D. Coordinate department advising including acceptance of majors, fulfillment of degree requirements, and assessment of equivalency and transfer credits;
- E. Assist the Dean with the development and ongoing management of department budgets;
- F. Assist in planning departmental offerings through assessing needs and recommending revisions in curricula, new degree programs, library acquisitions, and approaches to improve the delivery of instruction;
- G. Serve as the department representative for appropriate meetings;
- H. Perform other assignments relevant to the department as assigned by the Dean, including coordination assignments for department staff. These additional duties shall not include directly supervising bargaining unit members, serving as an investigator, or applying discipline.

Section 3. Selection, Evaluation, and Early Removal of Department Chairs.

A. Term of Office

The department chairperson shall serve a three (3) year term and is eligible to serve multiple consecutive terms. A department chairperson appointed after the start of an academic year will complete that year and two (2) additional years of service. Chairperson appointments terminate on the last day of spring semester of the last academic year of their term.

B. Selection of Department Chairperson

1. Prior to March 1 during the last year of a chairperson's term, the Dean will solicit from the department's bargaining unit members names of individuals to be considered for the chairperson position. Individuals may self-nominate or be nominated by others within the department. Only tenured or continuing contract faculty members who meet the academic requirements of relevant accrediting bodies are eligible for the chairperson position. The Dean will compile a list of those nominated and meet with department faculty to arrive at a mutually agreeable slate of candidates who meet the eligibility requirements.
2. The Dean will identify dates of the voting period which shall not be less than five (5) consecutive workdays and will distribute the ballots containing the slate of candidates. All bargaining unit members will be eligible to participate in the election of the chairperson. The Dean and an SEA-appointed representative will tabulate election results and make the results known to the faculty of the department. The Dean will then forward the selected candidate to the Provost for consideration and appointment. The three (3) year term will begin on the first Monday following the end of final exam

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week in the spring semester upon appointment by the Provost.

3. Notwithstanding the number of votes cast, an individual must receive votes equal to or greater than the majority of eligible voters to be elected chairperson. To be considered valid, a ballot must conform to instructions written on the ballot and clearly indicate only one (1) choice from among the names listed on the ballot. Write-in candidates will not be considered. If no one receives a majority vote, a run-off election between the two (2) candidates with the highest number of votes will be held.
4. If the department faculty are unable to decide on a candidate by vote, the Dean may appoint a chairperson from the slate of approved candidates to serve the three (3) year term or appoint an individual, not necessarily a bargaining unit member, to carry out the duties of chair until the next election cycle. If the appointment is an individual not included in the slate of approved candidates, the individual may serve no more than one (1) year in this capacity without the support of a majority of the bargaining unit members.
5. If no faculty member consents to permit his/her name to be on the ballot and a vacant faculty line is not available within the department, the Dean may appoint an individual, not necessarily a bargaining unit member, to carry out the duties of chairperson for the remainder of the academic year. Upon completion of that year, a special election will be held in which the appointee may stand for re-election. An individual may serve no more than one (1) year in this capacity without the support of a majority of the bargaining unit members. The Dean and an SEA-appointed representative will tabulate the faculty vote.
6. If no faculty member consents to permit his/her name to be on the ballot and a vacant faculty line is available within the department, a national search for a new faculty member to serve as department chairperson may be initiated.
 - a. The department faculty shall recommend individuals to serve on the search committee and submit the list of names to the Dean who will establish the committee.
 - b. The search committee's appointment and conduct shall be consistent with University guidelines provided by the Human Resources department. A new faculty member hired as department chairperson will be subject to reappointment as department chairperson at the end of the three (3) year cycle specified above.
 - c. An individual hired externally for the position of department chairperson shall be a bargaining unit member and must meet the criteria for the ranks of Associate Professor or Professor upon hire. Upon successful completion of one term (three (3) years) the department chairperson must apply and receive tenure to continue in the position of department chairperson. The awarding of tenure shall be based upon the criteria of teaching excellence as reflected in Appendix A and will follow the process below:

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- i. The Dean arranges instructional observations by a professor from the department or another department if a professor is not available,
 - ii. The department chairperson will prepare a tenure application folder that will provide evidence for meeting the criteria for teaching excellence to the College Promotion Committee (CPC),
 - iii. The CPC will submit a recommendation to the Dean and will follow the same process as the promotion and tenure process as identified in Article 11.
 - iv. If application for tenure is not made (unless extenuating circumstances outside the control of the individual) or tenure is denied, the individual will be subject to non-renewal.
 - d. A department chairperson employed as an Associate Professor having earned tenure as described in par. 6 above and seeking promotion to Professor must follow the promotion process identified in Article 11.
- C. Evaluation of Department Chairperson's Administrative Function.
 1. Performance evaluations of department chairpersons will be conducted by the Dean and faculty annually no later than six (6) weeks prior to the end of the spring term.
 2. Chairpersons will be evaluated on the basis of their performance of the duties listed in this article. The annual department chairperson evaluation can be used to provide a basis for improving the department chairperson's performance, when necessary.
 3. Using the University's performance management system, the Dean will distribute a chairperson evaluation instrument to faculty no later than six weeks prior to the end of the spring semester. The Dean will discuss the faculty evaluations and his/her own evaluation with the chairperson privately before dissemination to the faculty. The Dean will use results of the evaluation to develop a plan for improvement when appropriate. The Deans will convene a representative group of Department Chairpersons and an SEA-appointed representative to review and revise the existing evaluation instrument.
 4. Evaluation of the department chairperson's teaching effectiveness will be conducted as provided in Article 14 and shall not be addressed in the administrative evaluation.
- D. Early Removal of Department Chairperson.
 1. The process for early removal of a department chairperson may be initiated by either a majority of the department faculty, or the Dean, as follows:
 - a. Department Initiated:

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- i. If prior to the triennial election, two-thirds $2/3$ of departmental bargaining unit members petition the dean in writing, stating reasons that warrant removal, the Dean will investigate the complaints, consult with the faculty, and decide on removal of the chair.
 - ii. If, in response to the annual evaluation, two-thirds ($2/3$) of departmental bargaining unit members indicate that they do not support continuation of the individual in the department chairperson position, the process for selecting a new department chairperson will begin as soon as possible.
 - b. Dean Initiated:
 - i. The Dean may discuss deficiencies in performance with the department chairperson at any time and provide the department chairperson with a written notice of improvement. If performance does not improve as provided in the notice the Dean may submit a recommendation of removal to the Provost.
- E. Temporary Replacement of Department Chairperson on Leave of Absence (LOA) or Mid-Term Resignation.
 - 1. Leave of Absence
 - a. Chairpersons may be granted a leave of absence from administrative duties by the Dean.
 - b. If a leave of absence is granted, the Dean will appoint a temporary replacement after consultation with the department faculty.
 - c. The temporary replacement shall serve through the duration of the LOA.
 - 2. Mid-term resignation
 - a. If a chairperson voluntarily resigns from administrative duties, the Dean will appoint a temporary replacement after consultation with the department faculty and begin the process for electing a new chair as soon as possible. The newly elected chair will begin a new 3-year term.
 - b. The temporary replacement shall serve for the remainder of the current academic year or upon the election of the new chairperson.

Section 4. Academic Program Directors.

(Includes former Health Sciences Program Leaders. This does not include Directors of the GEP, Honors Program, etc.)

- A. Academic Program Directors shall be awarded a twelve (12) month supplemental contract

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in the amount commensurate with experience as an academic program director based on the following schedule:

First three years as Academic Program Director	\$18,000/year
4 - 6 years as Academic Program Director	\$20,000/year
7 – 10 years as Academic Program Director	\$22,000/year
11 years as Academic Program Director	\$25,000/year

- B. Academic Program Directors serving in AY2015-16 who served in that role in AY2014-15 and whose academic year and summer supplemental Academic Program Director contracts exceeded their placement on the above payment schedule will continue to be paid the same amount as in AY2014-15. This amount will continue to be paid until such time as the individual's years of service as Academic Program Director places him/her at a higher amount per the above payment schedule.
- C. Progression through the above payment schedule will continue as long as there is not a break longer than two terms.
- D. This supplemental contract terminates upon the incumbent's departure from the position as academic program director. Since accrediting and licensing bodies prescribe specific credentials for academic program directors in the health professions, the program director will be appointed by the Dean with the recommendation of the department chairperson and faculty in the program area.
- E. In the case of a vacancy, internal candidates with appropriate credentials will be given first consideration for appointment as academic program director.
- F. Academic Program Directors are expected to be available on campus and to perform academic program director responsibilities at least 20 hours per week during normal business hours (7:30 a.m. – 6:30 p.m.), Monday through Friday, throughout the 12-month contract period, including Winter break. A schedule shall be established for each semester with prior approval of the Dean. These 20 hours shall be in addition to teaching (class, clinical, or lab time), office hours, or other regular faculty responsibilities. Academic program directors are not required to be on campus during spring break. Time away from campus on approved University or departmental business will be considered work time. Summer semester schedules shall be approved in advance by the Dean.
- G. At the beginning of each fall semester, academic program directors will be provided eighty (80) hours of available leave time to be available for the 12-month contract period (prorated if appointment is mid-year).
1. This leave does not accrue and any remaining unused leave balance shall not carry over from year to year. Leave requires prior approval by the department chairperson and may be used during any break or when classes are not in session (excludes official University holidays and spring break).

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2. This leave may be scheduled throughout the twelve-month contract period except that during the summer semester academic program directors are expected to be present for new-student orientation dates and leave will typically not exceed two (2) consecutive weeks. Time away from campus should be scheduled to avoid conflict with assigned teaching. Requests for additional consecutive vacation requires prior approval from the department chairperson.
- H. No individual may receive more than one (1) supplemental contract under this Article in any academic year except as noted in Section 1. H. of this Article.
- I. The supplement shall not be used in the computation of overload or other compensation.
- J. The academic program director shall receive a course load reduction of six (6) contractual hours per academic year. During the years in which accreditation activity is significant or other major project work is necessary, additional three (3) hours of release time up to a total of nine (9) contractual hours per academic year may be approved by the Dean.
- K. The academic program director may teach summer courses and receive additional compensation as provided in Article 15. Time spent teaching is not included in the twenty (20) hours per week on campus.
- L. Academic Program Directors are expected to perform administrative duties consistent with the requirements set forth by their accrediting bodies and the Dean and/or Department Chairperson. Responsibilities will include:
1. Assist with the recruitment and retention of program students; plan and manage the assigned program processes, including course offerings, advising, recommending needs for the program's budget, etc.;
 2. Assist with the selection of new program faculty and staff following University guidelines; assist with new faculty and staff orientation and development;
 3. Evaluate program effectiveness and provide recommendations for improvement and growth; conduct program faculty instructional evaluations as required by accreditation standards (will not supervise faculty), etc.;
 4. Maintain and manage accreditation processes, coordinate site visits, prepare reports, and select and maintain clinical site affiliations or internship sites and agreements.
- M. Evaluation of Academic Program Director's Administrative Function.
1. Performance evaluations of academic program directors will be conducted by the Dean and faculty annually no later than six (6) weeks prior to the end of the spring term.
 2. Academic Program Directors will be evaluated on the basis of their performance of the duties listed in this article. The annual evaluation can be used to provide a basis for

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improving the academic program director's performance, when necessary.

3. Using the University's performance management system, the Dean will distribute an evaluation instrument to faculty and the department chairperson no later than six weeks prior to the end of the spring semester. The Dean will discuss the faculty evaluations and his/her own evaluation with the academic program director privately before dissemination to the faculty. The Dean will use results of the evaluation to develop a plan for improvement when appropriate.
 - a. The Deans will convene a representative group of Department Chairpersons, Academic Program Directors, and an SEA-appointed representative to develop an evaluation instrument.
4. Evaluation of the academic program director's teaching effectiveness will be conducted as provided in Article 14 and shall not be addressed in the administrative evaluation.
5. The Dean may discuss deficiencies in performance with the academic program director at any time and provide the academic program director with a written notice of improvement. If the academic program director does not improve performance as provided in the notice the Dean may submit a recommendation of removal to the Provost.

Section 5. Graduate Program Directors.

- A. Graduate Program Directors are appointed by the Dean, report to a department chairperson, and will receive six (6) contractual hours of release time during the academic year.
- B. Graduate Program Directors shall be awarded a twelve (12) month supplemental contract in the amount commensurate with experience as a graduate program director based on the following schedule:

First three years as Graduate Program Director	\$20,000/year
4 - 6 years as Graduate Program Director	\$22,000/year
7 - 10 years as Graduate Program Director	\$24,000/year
11 + years as Graduate Program Director	\$27,000/year

- C. Graduate Program Directors serving in AY2015-16 who served in that role in AY2014-15 and whose academic year and summer supplemental Graduate Program Director contracts exceeded their placement on the above payment schedule will continue to be paid the same amount as in AY2014-15. This amount will continue to be paid until such time as the individual's years of service as Graduate Program Director places him/her at a higher amount per the above payment schedule.
- D. Progression through the above payment schedule will continue as long as there is not a break longer than two terms.

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- E. No individual may receive more than one (1) supplemental contract under this Article in any academic year except as noted in Section 1. H. of this Article.
- F. This supplement shall not be used in the computation of overload or other compensation.
- G. This supplemental contract terminates upon the incumbent's departure from the position as graduate program director.
- H. Graduate program directors are expected to be available on campus and to perform graduate program director responsibilities at least 20 hours per week during normal business hours (7:30 a.m. – 6:30 p.m.), Monday through Friday, throughout the 12-month contract period, including Winter break. A schedule shall be established for each semester with prior approval of the Dean. These 20 hours shall be in addition to teaching (class, clinical, or lab time), office hours, or other regular faculty responsibilities. Graduate program directors are not required to be on campus during spring break. Time away from campus on approved University or departmental business will be considered work time. Summer semester schedules shall be approved in advance by the Dean.
- I. The graduate program director may also teach summer courses and receive additional compensation as provided in Article 15. Time spent teaching is not included in the twenty (20) hours average per week on campus.
- J. At the beginning of each fall semester, graduate program directors will be provided eighty (80) hours of available leave time to be available for the 12-month contract period (prorated if appointment is mid-year).
 - 1. This leave does not accrue and any remaining unused leave balance shall not carry over from year to year. Leave requires prior approval by the department chairperson and may be used during any break or when classes are not in session (excludes official University holidays and spring break).
 - 2. This leave may be scheduled throughout the twelve-month contract period except that during the summer semester except that leave will typically not exceed two (2) consecutive weeks. Time away from campus should be scheduled to avoid conflict with assigned teaching. Requests for additional consecutive vacation requires prior approval from the department chairperson.
- K. Duties of a graduate program director may include:
 - 1. Assist with the recruitment and retention of graduate students; plan and manage the graduate program processes, including course offerings, advising, recommending needs for the program's budget, etc.;
 - 2. Assist with the selection of new graduate program faculty and staff following University guidelines; assist with new faculty and staff orientation and development;

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3. Evaluate graduate program effectiveness and provide recommendations for improvement and growth; conduct graduate faculty instructional evaluations (will not supervise faculty), etc.;
4. Maintain and manage accreditation processes, coordinate site visits, prepare reports, and select and maintain clinical site affiliations or internship sites and agreements.

L. Evaluation of Graduate Program Director's Administrative Function.

1. Performance evaluations of graduate program directors will be conducted by the Dean and faculty annually no later than six (6) weeks prior to the end of the spring term.
2. Graduate Program Directors will be evaluated on the basis of their performance of the duties listed in this article. The annual evaluation can be used to provide a basis for improving the graduate program director's performance, when necessary.
3. Using the University's performance management system, the Dean will distribute an evaluation instrument to faculty and the department chairperson no later than six weeks prior to the end of the spring semester. The Dean will discuss the faculty evaluations and his/her own evaluation with the graduate program director privately before dissemination to the faculty. The Dean will use results of the evaluation to develop a plan for improvement when appropriate.
 - a. The Deans will convene a representative group of Department Chairpersons, Graduate Program Directors, and an SEA-appointed representative to develop an evaluation instrument.
4. Evaluation of the graduate program director's teaching effectiveness will be conducted as provided in Article 14 and shall not be addressed in the administrative evaluation.
5. The Dean may discuss deficiencies in performance with the graduate program director at any time and provide the graduate program director with a written notice of improvement. If the graduate program director does not improve performance as provided in the notice the Dean may submit a recommendation of removal to the Provost.

Section 6. Academic Program Coordinators, Clinical Coordinators and University College Developmental Directors.

- A. Academic Program Coordinators, Clinical Coordinators and University College Developmental Directors are bargaining unit members recommended by the department chairperson or academic program director to the Dean except University College Developmental Directors that report to the Dean. These coordinators/directors will be identified and appointed annually by the Dean with recommendation of the bargaining unit members in the specific program area.

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- B. The assigned duties are varied and may include, but will not be limited to: assisting in faculty staffing decisions, textbook selections for adjuncts, program review, clinical site coordination, evaluation and recommendation of retention of adjuncts in the program, feedback concerning the retention of FTIs in the program, and other duties which are germane to the program as assigned by the department chairperson or academic program director in consultation with the faculty in that program. Academic Program Coordinators and Clinical Coordinators will not supervise other bargaining unit members.
- C. Academic Program Coordinators, clinical coordinators, and University College (UC) Developmental Program Directors may be awarded a stipend and/or course load reduction for duties as assigned by the department chairperson or academic program director with approval of the Dean. The stipend amount will not exceed \$1,500 per semester. This stipend shall not be included in calculation for workload or overload. Any approved course load reduction shall be consistent with accreditation standards where applicable.

Section 7. Other (Non-Departmental) Directors.

- A. The Provost may appoint directors for non-departmental assignments. It is understood that these assignments may be staffed by bargaining unit members as determined by the Provost. Such bargaining unit members will be compensated based upon such factors as: numbers of students enrolled or impacted by the program, the complexity of the assignment or program, variety of programming and/or service activities, experience and credentials of the individual, etc.
- B. The Provost and Deans will jointly review the allocation of compensation including release time for non-departmental director assignments with the SEA and UFS to ensure consistency and internal equity based upon the above factors.
- C. The Provost and Deans will also review the governance structure with the SEA and UFS to ensure that appropriate faculty oversight is present for the following programs: Teaching and Learning Center, Academic Assessment, Celebration of Scholarship, Honors Program, English Composition, the Writing Center, the General Education Program, Distance Learning, the Adjunct Academy. These oversight committees may be integrated into the UFS committee structure upon the recommendation and acceptance of the UFS.

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ARTICLE 14. EVALUATIONS AND WORKING CONDITIONS

Section 1. Student Evaluations of Instruction.

- A. Bargaining unit members shall be evaluated in all classes during all semesters, including online and blended distance learning courses. Exceptions for student evaluations will typically include: lab and clinical experiences requiring only supervision rather than direct instruction, individual research or a low enrollment course (5 or fewer) in which the anonymity of the student(s) cannot be guaranteed. A faculty member may utilize a form that is appropriate for clinical evaluations as needed for accreditation purposes.
- B. Procedure
 - 1. The University shall provide online student evaluation material to the faculty member for distribution by the faculty member to the class. Any exceptions to the following evaluation process shall be approved by the Dean:
 - a. Student evaluation of instruction will be conducted during the two (2) weeks prior to the final exam for the courses taught.
 - b. In no case may student evaluations be conducted during a class period in which a final exam is administered.
 - c. If evaluations are performed in the classroom, faculty members will remain outside the classroom during the evaluation process.
- C. The University will encourage the use and sharing of best practices by bargaining unit members for online and blended course evaluations.
- D. The University shall provide the faculty member, department chair and the Dean with the tabulated results and written comments by the third week of the following semester. If the faculty member questions the accuracy of the results, the SEA President or designee and a representative of the University shall meet to review the results.
- E. Follow-up
 - 1. The chairperson will review the results of student evaluations of all non- tenured bargaining unit members and discuss the results with the faculty member.
 - 2. If evaluations of a tenured or continuing contract faculty member indicate a lack of teaching effectiveness over two or more semesters, the Dean in consultation with the Department Chairperson will determine if follow up and support are necessary.
- F. Student Evaluation Instrument: Both parties recognize that review and revision of student evaluation forms and development of new forms for other courses may be necessary. The adoption of new forms or changes to evaluation forms shall be negotiated between the

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University and Association. The Association shall consult UFS and Student Government Association in this process.

- G. All evaluations shall be completed anonymously. The University will take reasonable steps to ensure only enrolled students are able to submit a single evaluation per student.
- H. All distance learning courses shall be subject to the same student evaluation requirements as traditional courses including completion of the University approved student evaluation instrument (which may be administered online).
 - 1. Student evaluations shall include additional questions pertinent to online and blended distance learning courses as follows:
 - a. clarity of course content
 - b. level of interactivity via e-mail, chat rooms, discussion boards, the electronic drop box, or other means
 - c. appropriate use of outside links
 - d. sequencing of material within the course
 - e. overall design and content of the course
 - f. ease of navigation through the course
 - g. relatedness of course materials to course syllabus
 - h. appropriateness of amount of material in relation to the level of the course
 - i. any other areas related to distance learning
 - 2. Evaluation by the Dean, Chair or a representative of the Mentoring Committee provided for in this Agreement shall occur as follows:
 - a. In-class evaluators will be given access to the course site at the student level (not the instructor level).
 - b. In-class evaluators will be given access to course sites for three (3) consecutive workdays.
 - c. The instructor of the course will be notified a minimum of two (2) days in advance of evaluation.
 - d. In-class evaluators will not copy course content or disseminate access to the course site to others without the express written consent of the instructor and/or developer of the course. Violations will be addressed through the informal and formal

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processes in Article 18.

Section 2. In-class Evaluations.

- A. In-class administrative performance evaluations will be conducted by the Dean or the Department Chairperson of all non-tenured faculty members without continuing contract status at least once a year with two (2) days prior notice, as follows:
 - 1. As part of the promotion and tenure review process, one (1) member of the Mentoring Committee may conduct in-class evaluations of tenure-track faculty members.
 - 2. The Dean, department chair, or member of the Mentoring Committee may conduct in class evaluations of a tenured faculty member or of faculty members with continuing contract as part of the post-tenure review process (see Article 11) where relevant. This evaluation shall be coordinated with the faculty member.

Section 3. Safety and Security.

Faculty will report to the University Safety Committee all matters regarding safety and/or hazardous conditions of which they are aware associated with the workplace.

- A. All hazardous equipment used in classrooms and laboratories by students and faculty must have appropriate safety devices readily accessible, i.e., safety glasses, and/or other personal safety equipment, for each piece of hazardous equipment. The faculty member shall not permit the use of such equipment if the safety devices are lacking.
- B. The University agrees to provide timely, appropriate training to bargaining unit members who are required to perform duties which involve potential hazards to safety and health.
- C. A central source for assistance and information will be available on campus until 10:00 p.m. on those evenings classes are scheduled.
- D. Laboratories where chemical odors are or may be present which can irritate the eyes, nose, throat, and/or skin must have sufficient ventilation to protect all occupants of the laboratory and all persons within the confines of any building which may be affected.
- E. The University through the Safety Committee will provide reasonable access to adequate first aid kit(s) for each workspace and/or classroom. The kit(s) will be maintained in designated locations and inspected periodically or upon notification of use, and will be replenished as needed.
- F. The University shall adhere to the applicable clinical faculty student ratio required by the accreditation standards for safety purposes. Program Directors are responsible for providing the Department Chairperson the current faculty student ratio.
- G. The University will follow its bloodborne pathogens policy.

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- H. Student enrollments in laboratory classes will not exceed the maximum number of student lab spaces available as determined by the Office of the Provost.
- I. Unless there is a clearly demonstrable space need, non-science classes shall not be scheduled in laboratory classrooms.
- J. Faculty will report to the University-wide safety & security committee and/or to University safety or security staff regarding any unsafe, hazardous condition or event, or matters of security as soon as they become aware or observe.
- K. Bargaining unit members shall be afforded protection within reason from interference, coercion, discrimination, or reprisal for filing an internal report to the proper University administrative officer or director regarding an unsafe or unhealthful condition(s).
- L. SEA shall have two (2) appointments to the relevant committee that addresses safety and security matters.

Section 4. Use of University Facilities.

Except for emergency closings deemed necessary by the University President or designee, full-time faculty members shall have 24-hour, 365-day access to their offices and other facilities for University-related professional activities

Section 5. Personnel Files.

- A. The University shall maintain in the Office of the Provost one official personnel file for each bargaining unit member. All documents placed in this personnel file shall be dated and signed by the University official authorized to do so. The bargaining unit member shall be sent a stamped copy of the document at the time of placement and shall have opportunity to add his/her written statement as an attachment to any document in such file.
- B. The official personnel file shall be the only file used for disciplinary decisions under this Agreement except for disputes involving pay or leave of absence records that are retained in the personnel files in the Department of Human Resources.
- C. Other Personnel Files and Investigative Files.
 - 1. Files will be maintained in Human Resources containing copies of contracts and supplemental contracts, rates of pay, sick day accumulation, and other payroll, tax, and fringe benefit information.
 - 2. A file may be maintained by the University's investigating official containing information collected during an investigation into a formal complaint, sexual harassment charges, ethics complaint, or alleged illegal activity and will be subject to the University's retention schedule or as directed by federal or state laws.

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3. Unofficial or working files maintained by the Deans shall not be used for disciplinary matters and copies will be provided upon request of the bargaining unit member.
 4. After a period of two years, the Bargaining Unit member may request the removal of records of informal actions (coaching, advisory letters, or verbal warnings), that are not grievable, from the Dean's file other than those records related to discrimination prohibited by state or federal law.
- D. Access to Files. The bargaining unit member shall have access at reasonable times to his/her personnel file(s), and may have an Association representative present while reviewing his/her file. These files may be reviewed in the Provost's Office or Department of Human Resources in the presence of a representative from that office. Each bargaining unit member shall have the right to obtain from the University a copy of any document contained within his/her file(s). The University will provide one copy free of charge but may charge a reasonable fee for additional copies.

Section 6. Electronic Media.

- A. Official personnel file(s) may be electronically scanned within the University's established electronic imaging record-keeping system in accordance with filing and retrieval procedures instituted within the applicable department. Both parties shall strictly comply with all the laws governing electronic surveillance and access of electronic information.
- B. Telephone conversations, electronic communications (including e-mails), oral communications, and University offices of faculty shall be subject to a reasonable degree of privacy. The University will not monitor or intercept such communications, or intrude upon faculty offices, without a determination by the President of the University, or a relevant investigating officer, that such communications are of reasonable probative value to an investigation. Such communications shall be subject to the academic freedom provisions identified in Article 7. Bargaining unit members will comply with provisions of University policies addressing campus computer and network use. Both parties recognize that such communications may be subject to legal discovery or public records requests.
- C. Telephone and oral communications between and among SEA and SSU employees and Trustees which are recorded without all parties' permission shall not be used in any grievance or arbitration.
- D. This article does not restrict either party from using documents that are legally obtained through the Ohio Public Records Act in grievances or arbitrations.

Section 7. Professional Development and Required Training.

- A. Professional Development.
 1. The University encourages the continued professional and intellectual development

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activities of faculty members. This development may incorporate a number of individualized programs which may require adjustments in schedules.

2. Flexible Scheduling. Upon approval by the Department Chair and Dean, a bargaining unit member's assignment may be adjusted during the year (including summer) to permit time to pursue advanced course work. This adjustment may include a heavier load during a particular term(s) and/or specific assignments during the summer term. Flexible schedules might also include two or three day assignments, or morning or afternoon schedules. Where appropriate, all assignments would be in agreement with the current Agreement with regard to faculty workload expectations.

B. Required Training

1. The University will provide timely, appropriate training to bargaining unit members to ensure awareness of Board of Trustees' policies and procedures, federal, and state regulations related to anti-discriminatory laws, environmental health, safety, and security. Training on these matters is mandatory for all employees including faculty members.
2. The academic year includes in-service faculty orientation activities that shall be scheduled on the academic calendar. All bargaining unit members are required to attend unless on approved leave or class schedules will conflict. The Office of the Provost and the University Faculty Senate will convene a joint committee to develop an agenda.
3. All University employees including faculty members will adhere to Board of Trustee policies and procedures related to federal, state regulations, safety, health and security matters (e.g., non-discrimination & harassment, blood-borne pathogens, Infectious and Communicable Diseases, drug-free workplace, etc.)

Section 8. Committee Membership.

- A. Academic Calendar: The University shall develop the academic calendar in consultation with the Association, which will be involved from the onset of the process. The Association shall appoint two (2) representatives to work with the administration in development of the calendar.
- B. The Association shall have the right to appoint one (1) member to search committees established for the purpose of selecting any administrative officer in the academic area at the level of Chair, if chairs are not in the bargaining unit, and Dean or above.

Section 9. Tobacco and Other Smoke Products and Drug-Free Workplace.

- A. Smoking of any product (including e-cigarettes) and the use of smokeless tobacco products are prohibited as provided in University policies. Smoking and the use of smokeless tobacco products shall be prohibited in all vehicles owned or leased by the University or

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groups and organizations connected with the University.

- B. The University and the Association agree that it is their mutual goal to achieve and maintain a drug-free workplace in accordance with federal law (ref. Article 18).

Section 10. Consulting and External Employment.

- A. Bargaining unit members shall be permitted to engage in limited consulting or speaking related to the bargaining unit member's areas of professional expertise so long as these activities do not interfere with the University's educational mission. In doing so, bargaining unit members may make limited and reasonable use of University resources.
- B. Bargaining unit members shall be permitted to engage in limited external employment so long as these activities do not interfere with the University's educational mission. In doing so, bargaining unit members should not utilize University resources for this external work.
- C. In all instances, the bargaining unit member will provide prior notification to the Dean, providing assurances that the external assignment will not conflict with assigned duties at the University and will not create a conflict of interest between assignments.

ARTICLE 15**ARTICLE 15. UNIVERSITY FUNDED SALARY SYSTEM****Section 1. Initial Salary Placement.**

- A. Beginning salaries at initial appointment of bargaining unit members in accordance with Article 9 will be based upon the candidate's degree and applicable experience by Rank as recommended by the Dean and approved by the Provost and SEA President. The newly hired bargaining unit member's salary shall be placed within the Initial Salary Placement Table as follows:

Initial Salary Placement Table

Rank/Step	0 - < 1 years	1 - < 4 years	4 - < 8 years	8 - < 10 years	10 + years
Professor	68,255	70,388	72,521	74,654	76,787
Associate Professor	55,543	57,278	59,014	60,750	62,486
Assistant Professor	47,161	48,634	50,108	51,582	53,056
Sr. Instructor	39,976	41,225	42,474	43,724	44,973
Instructor	39,300	40,528	41,756	42,985	44,213

- B. In limited circumstances and only with recommendation of the Dean and prior approval of the Provost and SEA President, a newly employed bargaining unit member who possesses exceptional teaching or applicable experience (more than 10 years) may receive a salary that exceeds the maximum rate reflected on the above Initial Salary Placement Table.
- C. All newly employed bargaining unit members will transition from the Initial Salary Placement Table to the Continuing Faculty Salary Table 2015 – 2018 beginning with their second year of employment. Such placement will be at the next step closest to the starting salary that provides an increase and follow provisions identified in Section 2.
- D. Only newly employed bargaining unit members beginning fall semester 2015-2016: Starting salaries will be in accordance with the above Initial Salary Placement Table. However, no bargaining unit member will receive less than the agreed-upon salary in his/her AY15-16 employment offer letter.

Section 2. Salary for Continuing Bargaining Unit Members.

- A. Effective fall semester AY15-16, the University will adopt the following salary table based on AAUP East North Central Baccalaureate Institution Average Salary per Rank.
- B. Step A on the table shall be 80% of the average salary per rank in the above report. Steps shall increase by approximately 2.5% to 100% in Step I.
- C. This table shall apply to all bargaining unit members continuing employment from AY14-15:

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Continuing Faculty Salary Table – 2015-2018

Rank/Step	A	B	C	D	E	F	G	H	I
Professor	\$68,255	\$70,388	\$72,521	\$74,654	\$76,787	\$78,720	\$80,853	\$82,986	\$85,119
Associate Professor	\$55,543	\$57,278	\$59,014	\$60,750	\$62,486	\$64,021	\$65,757	\$67,493	\$69,228
Assistant Professor	\$47,161	\$48,634	\$50,108	\$51,582	\$53,056	\$54,530	\$56,003	\$57,477	\$58,951
Sr. Instructor	\$39,976	\$41,225	\$42,474	\$43,724	\$44,973	\$46,222	\$47,471	\$48,721	\$49,970
Instructor	\$39,300	\$40,528	\$41,756	\$42,985	\$44,213	\$45,441	\$46,669	\$47,897	\$49,125

D. Academic year salary adjustments for continuing bargaining unit members shall be as follows:

1. Academic Year 2015-2016 (Year 1)

- a. All continuing bargaining unit members employed at SSU as of the beginning of AY15-16 (fall semester) shall:
 - i. Receive a two-percent (2%) increase to his/her AY14-15 annual base pay.
 - ii. Be placed on the above Continuing Faculty Salary Table 2015-2018 considering the years in rank:
 - (a). Step A = 1-4 years in rank at SSU
 - (b). Step C = 5-9 years in rank at SSU
 - (c). Step E = 10 or more years in rank at SSU
 - iii. If a bargaining unit member's salary (after the 2% increase in a. above) exceeds the step that represents their current years in rank at SSU, s/he shall be placed at the salary step closest to their adjusted AY14-15 salary (that provides an increase).

2. Academic Year 2016-2017 (Year 2)

- a. All continuing AY16-17 bargaining unit members shall move one step in the Continuing Faculty Salary Table 2015-2018 except as identified in par. 2. b. or 2. c. below.
- b. Those bargaining unit members who completed 5 years in rank at SSU in AY15-16 will be moved to step C (85%) within their rank, unless they are already above this step; those who completed 10 years in rank at SSU will be moved to step E (90%) within their rank, unless they are already above this step.
- c. Bargaining unit members with salaries above the maximum step for their rank of the above Continuing Faculty Salary Table 2015-2018 (above step I) will receive a 1.5% increase to his/her AY15-16 base.

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3. Academic Year 2017-2018 (Year 3)

- a. All continuing AY17-18 bargaining unit members shall move one step in the Continuing Faculty Salary Table 2015-2018 except as identified in par. 3. b. or 3. c. below.
- b. Those bargaining unit members who completed 5 years in rank at SSU in AY16-17 will be moved to step C (85%) within their rank, unless they are already above this step; those who completed 10 years in rank at SSU will be moved to step E (90%) within their rank, unless they are already above this step.
- c. Bargaining unit members with salaries above the maximum step for their rank of the above Continuing Faculty Salary Table 2015-2018 (above step I) will receive a 1.5% increase to his/her AY16-17 base.

Section 3. Promotion.

- A. Each bargaining unit member who is promoted in academic rank in accordance with Article 11 for tenure track and Article 10 for non-tenure track during the term of this Agreement shall be placed at the minimum step for the new rank, or the step at the new rank that provides at least a (5%) increase for the applicable academic year. This adjustment will occur at the beginning of the next academic year and will apply in lieu of the normal step adjustment as identified in Section 2. B.
- B. Bargaining unit members whose salaries are above the maximum salary of the new rank upon promotion will receive 5% of the current base salary.

Section 4. Exceptions to the University Funded Salary System.

With University President approval, endowed chairs and faculty salaries may be supplemented from external sources including funds granted to Shawnee State University Development Foundation (SSUDF) and other foundations for that purpose. These supplements are not considered within the scope of the University funded salary system and will be based upon the terms of their award.

Section 5. Overload.

- A. Overload assignments must be approved in advance by the Provost or designee. No bargaining unit member shall be required to accept an overload assignment.
- B. Whenever a faculty member agrees to overload teaching, the Dean shall provide the faculty member written confirmation that the overload assignment has been approved prior to teaching the course.
- C. The opportunity to teach an overload course shall be offered equitably among bargaining

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unit members based upon the academic discipline or subject area, required credentials, and experience, as determined by the department chairperson.

- D. Any contractual hours above twenty-four (24) for tenured, tenure-track, or continuing contract or thirty (30) contractual hours for full-time instructors (non-tenure-track) assigned for the academic year shall also be considered overload.
- E. For the purpose of calculating overload, faculty members hired mid-academic year or on an approved leave of absence shall be presumed to have had a workload of twelve (12) contractual hours, or fifteen (15) contractual hours for full-time instructors, for any academic term they are absent.
- F. All overload compensation will be based on a twenty-four (24) contractual hour year for tenured, tenure track and continuing contract bargaining unit members and a thirty (30) contractual hour year for full-time instructors (non-tenure track). Visiting faculty will be based on twenty-four (24) contractual hours.
- G. Effective AY15-16 compensation for overload will be a standard credit-hour rate by rank (not including stipends or other adjustments), as follows:

Professor	\$1,425 per credit hour
Associate Professor	\$1,350 per credit hour
Assistant Professor	\$1,225 per credit hour
Sr. Instructor	\$1,150 per credit hour
Instructor	\$1,025 per credit hour

- H. Bargaining unit members who have a 23 hour or less yearly workload for more than one consecutive year may be assigned an additional course for which they are qualified to teach by the Dean at 100% of their hourly rate for any hours above 24 for the year. No bargaining unit member may be assigned more than two (2) additional workload hours for the year. The bargaining unit member may not refuse such assignment.
- I. The Dean’s office shall submit the approved overload for each bargaining unit member (on a supplemental pay remittance document) to the Payroll department no later than the 10th week of the spring semester. The supplemental pay for the academic year overload will be remitted on the last regular payroll of the academic year.

Section 6. Course Preparations.

- A. A course preparation shall be defined as a three (3) credit hour or higher course. A course that includes a lecture and clinical supervision will be considered a prep only for those bargaining unit members assigned the lecture component. In any academic year, multiple sections of the same course shall be considered one (1) prep. Multiple courses taught at the same time by any one bargaining unit member shall be considered one (1) prep.
- B. No later than three (3) weeks prior to the start of an academic term faculty members may

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request the department chairperson to change their course assignments among those available on the department schedule which they are qualified to teach if they have been assigned more than three (3) preparations in a semester and the other bargaining unit members in the department do not exceed three (3) preparations in the semester as a result of the change.

- C. Bargaining unit members affected by any course changes under this section may appeal the department chairperson's decision to the Dean.
- D. If the Dean or Department Chairperson determines that it is necessary to exceed this limit the Dean or Chairperson will first discuss the matter with the bargaining unit member. If a mutual agreement is not reached after this discussion, the Dean or Chairperson may assign the bargaining unit member the extra prep but the bargaining unit member's preparations shall be reduced the following semester when possible.

Section 7. Summer and Intersession Employment.

- A. Summer/intersession teaching is voluntary.
 - 1. Tenured, tenure-track, and continuing contract bargaining unit members who normally teach a course during the academic year have a preference (up to two courses) over full time instructors (NTT) and part-time faculty in the selection of summer/intersession courses.
 - 2. Such assignment(s) shall be rotated equitably based upon the academic discipline or subject area, required credentials, and experience, by the Dean in consultation with the department chairperson.
 - 3. Course assignments in excess of twelve (12) hours will be offered on an emergency basis with the express prior approval of the Dean.
- B. Summer/intersession compensation for both undergraduate and graduate courses shall be 100% of the bargaining unit member's per hour annual academic year salary over a twenty-four (24) contractual hour base, as long as the course is a minimum of twenty-two (22) students.
- C. Based upon the Registrar's official course enrollment for undergraduate courses on the first Monday after the first Tuesday of the term for summer courses and on the second day of classes for intersession courses in which enrollment is less than twenty-two (22) students the following compensation shall apply:

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Number of Students	Percentage	Number of Students	Percentage
21	97.5%	13	77.5%
20	95.0%	12	75.0%
19	92.5%	11	70.0%
18	90.0%	10	64.0%
17	87.5%	9	59.0%
16	85.0%	8	54.0%
15	82.5%	7	48.0%
14	80.0%	6	43.0%
		5 or less	38.0%

- D. Based upon the Registrar's official course enrollment for graduate courses on the first Monday after the first Tuesday of the term for summer courses and on the second day of classes for intersession courses in which enrollment is less than ten (10) students the following compensation shall apply:

Number of Graduate Students	Percentage
9	90%
8	80%
7	70%
6	60%
5	50%
4 or less	40%

- E. The bargaining unit member's standard per-hour contractual rate (100%) shall be paid for those courses with a maximum enrollment. This includes Senior Seminar, English composition, and laboratory components of courses (not including the didactic class component). Compensation for these courses shall be reduced by 2.5% for each student under the agreed upon maximum enrollment.
- F. Faculty teaching summer courses are required to post one (1) office hour for each course section.
- G. The determination of whether a course is to be offered, regardless of the enrollment, shall remain at the discretion of the Dean. Once a bargaining unit member commits to teaching a summer/intersession course by signing a summer/intersession contract, the member may not withdraw the teaching obligation except as otherwise permitted under this contract (See Article 17). If the Registrar's official course enrollment on the first Monday following the first Tuesday of the term is greater than the contracted amount, the higher (actual) enrollment will be applied and the faculty member's contract adjusted accordingly. In no case will the contracted amount be lowered.

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Section 8. Advanced Degree Completion.

- A. Any bargaining unit member completing an approved doctoral degree directly related to their current teaching assignments as determined by the Dean after at least two years of continuous full-time service at the University will be awarded a lump sum stipend of \$1,000 per year at the end of the academic year of continuous service for three consecutive years for a total of \$3,000. If the bargaining unit member leaves prior to the complete payment s/he will forfeit the remainder of the degree completion stipend.
- B. A doctorate is a degree awarded by an institution of higher education that is regionally accredited for the degree awarded at the time it was awarded by agencies recognized by the Secretary of the US Department of Education. The Provost and President of SEA or their designees must mutually agree that degrees from foreign institutions are the equivalent of regionally accredited degrees.

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ARTICLE 16. FRINGE BENEFITS

Section 1. Retirement Plans.

- A. The University shall designate each bargaining unit member's mandatory contributions to the State Teachers' Retirement System of Ohio as "picked up" by the University as permitted by Internal Revenue Service rulings. Such contributions shall continue to be designated as employee contributions as recognized by state law. Therefore, the amount of the employee's income reported by the University as subject to federal and Ohio income tax shall be the employee's total gross income reduced by the then-current percentage amount of the employee's mandatory State Teachers Retirement System of Ohio contribution. Such shall be included in computing final average salary, provided that no bargaining unit member's total salary is increased by such "pick up" nor is the University's total contribution to the State Teachers Retirement System of Ohio increased thereby.
- B. All newly hired bargaining unit members may elect to participate in the Ohio Alternative Retirement Plan (ARP) within 120 days of hire. If no election is made, the bargaining unit member shall be enrolled into Ohio's State Teachers Retirement System (STRS). This election is irrevocable for the member's continuous employment with Shawnee State University.
- C. The University's employer contribution rate to a faculty member's Alternative Retirement Plan will be the required employers' contribution rate to the State Teachers Retirement System (STRS) less any mitigating contributions to the state retirement system as required under ORC Chapter 3305 for electing employees.

Section 2. Group Health Plan.

“Article 16, Fringe Benefits, contains provisions that provide “first-dollar coverage” in the High Deductible Health Plan (HDHP). First-dollar coverage is not allowable for an HDHP with a Health Savings Account (HSA) under the Internal Revenue Code. The parties recognize that these provisions are not enforceable and, if followed, would expose both the Participants and the Plan to potential negative taxation consequences. The parties are utilizing the Memorandum of Understanding (MOU) process to provide alternative options for HDHP Plan participants that will ensure compliance with applicable IRS regulations. Upon acceptance, these options will be communicated to all HDHP Plan participants.”

The University shall provide group health coverage for medical, prescription, and will offer dental, and vision coverage to all eligible bargaining unit members for the duration of this contract. Detailed descriptions of the group health plan(s) will be maintained in Human Resources and all plan participants will be provided summary descriptions of each Plan.

A. Medical Insurance

- 1. The University's medical insurance plan in effect as of July 1, 2015 shall remain in

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effect through December 31, 2016, as follows:

- a. The faculty plan participants will be covered by the University's health care program which will include deductibles of \$500(S)/\$1,000 (F and E+1) and a 90/10 in-network co-payment with out of pocket maximum of 1,500 (S)/\$3,000 (F and E+1) including the deductible and 75/25 out-of-network with deductible \$1,000(S)/\$2,000(F and E+1) co-payment with out of pocket maximum of \$3,000(S)/\$6,000(F and E+1) including deductible. Emergency room visits not followed by admission to the hospital will have a user copay of \$75.00 per visit.
 - b. Bargaining unit member contributions shall be deducted during the academic year at \$38.00/pay for single, \$75.00/pay for employee +1 and \$120.00/pay for family coverage through December 31, 2015.
 - c. Beginning January 1, 2016, bargaining unit member contributions shall be deducted over the academic year (18 pay periods, remaining pays no deduction) at \$46.00/pay for single, \$92.00/pay for employee +1 and \$162.00/pay for family coverage through December 31, 2016.
2. Beginning January 1, 2016, the University will provide bargaining unit members with two plan options for medical insurance. Bargaining unit members may elect his or her plan option upon hire, during the annual open enrollment period, or upon a family status change as provided under the plan and federal law. The following additional HDHP option will be made available to bargaining unit members:
- a. High Deductible Health Plan (HDHP): The HDHP medical insurance plan will include deductibles of \$3,000(S) - \$6,000 (F and E+1) and a 90/10 in-network co-payment with out of pocket maximum of \$6,350(S)/\$12,700 (F and E+1) including the deductible and 60/40 out-of-network with deductible \$6,000(S)/\$12,000(F and E+1) co-payment with out of pocket maximum of \$12,700(S)/\$25,400(F and E+1) including deductible. Emergency room visits not followed by admission to the hospital will have a user co-pay of \$75.00 per visit.
 - b. For the HDHP participants only, the bargaining unit members will be eligible to receive an employer contribution into a Health Savings Account (HSA) in the amount of \$500 for Single coverage, \$800 for Employee + 1 coverage, and \$1,000 for Family coverage per Plan year.
 - i. Bargaining unit member contributions if elect HDHP January 1, 2016 shall be deducted over the academic year (18 pay periods, remaining pays no deduction) at \$10/pay for single, \$19//pay for employee +1 and \$34/pay for family coverage through December 31, 2016.
3. Beginning January 1, 2017 and continuing December 31, 2018, the University will continue to provide bargaining unit members with two plan options for medical insurance. Bargaining unit members may elect his or her plan option upon hire, during

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the annual open enrollment period, or upon a family status change as provided under the plan and federal law. The University's medical insurance plans shall include a Preferred Provider Organization (PPO) and a High Deductible Health Plan (HDHP) that is supplemented by a Health Savings Account (HSA). The Plan design for each shall be:

- a. Preferred Provider Organization (PPO): The PPO medical insurance plan will include deductibles of \$1,000(S)/\$2000 (F and E+1) and 80/20 in-network co-payment with out-of-pocket maximum of \$3000 (S)/\$6000 (F and E+1) including the deductible and 70/30 out-of-network with deductible \$2,000 (S)/\$ 4,000 (F and E+1) co-payment with out of pocket maximum of \$6000 (S)/\$12,000 (F and E+1) including deductible. Emergency room visits not followed by admission to the hospital will have a user co-pay of \$75.00 per visit.
- b. High Deductible Health Plan (HDHP): The HDHP medical insurance plan will include deductibles of \$3,000(S) - \$6,000 (F and E+1) and a 90/10 in-network co-payment with out of pocket maximum of \$6,350(S)/\$12,700 (F and E+1) including the deductible and 60/40 out-of-network with deductible \$6,000(S)/\$12,000(F and E+1) co-payment with out of pocket maximum of \$12,700(S)/\$25,400(F and E+1) including deductible. Emergency room visits not followed by admission to the hospital will have a user co-pay of \$75.00 per visit.

For the HDHP participants only, the bargaining unit members will be eligible to receive an employer contribution into a Health Savings Account (HSA) in the amount of \$500 for Single coverage, \$800 for Employee + 1 coverage, and \$1,000 for Family coverage per Plan year.

4. The University's Medical Plan Designs (both PPO and HDHP) will be reviewed in 2017 to determine the impact upon the calculation of tax obligations required under the Affordable Care Act (ACA). The Plan Design may be modified beginning 2018 if it is determined the University will be subject to taxation. In such case the University and Association will address such changes through the Memorandum of Understanding (MOU) process.
5. Bargaining unit member contributions shall be deducted over the academic year pay periods, remaining pays no deduction) as follows:

PPO Medical Plan

Beginning	January 1, 2017 (18 pays)	January 1, 2018 (18 pays)
Employee (single)	\$56.00/pay	\$73.00/pay
Employee + 1	\$111.00/pay	\$146.00/pay
Family	\$195.00/pay	\$256.00/pay

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HDHP Medical Plan

Beginning	January 1, 2017 (18 pays)	January 1, 2018 (18 pays)
Employee (single)	\$10.00/pay	\$14.00/pay
Employee + 1	\$19.00/pay	\$28.00/pay
Family	\$34.00/pay	\$50.00/pay

B. Prescription

1. Through December 31, 2015 the co-pay for 30 day supply of prescription drugs will be \$10 for generic drugs and \$25 on preferred brand name drugs and \$35 for non-preferred brand name drugs. The co-payment for mail order (90-day supply) will be \$20 for generic, \$50 for approved list brand, and \$70 for non-approved list brand name drugs.
2. Beginning January 1, 2016 the co-pay on prescription drugs for retail (30 day supply) will be \$10 for generic, \$25 for approved list (formulary) brand, \$35 for non-formulary brand, and 25% co-insurance (up to \$250) for specialty drugs. Mail order (90-day supply) co-pay will be \$20 for generic formulary, \$50 for brand formulary, \$70 for non-formulary, and 50% co-insurance (up to \$500) for specialty drugs.
3. Beginning January 1, 2017, coverage of prescription drugs will be based on the type of medical plan the bargaining unit member elects to participate in (PPO or HDHP).
 - a. PPO Participants: co-pay on prescription drugs for retail (30 day supply) will be \$10 for generic, \$35 for approved list (formulary) brand, \$60 for non-formulary brand, and 25% co-insurance (up to \$250) for specialty drugs. Mail order (90-day supply) co-pay will be \$20 for generic, \$70 for approved list (formulary) brand, and \$120 for non-formulary, and 50% co-insurance (up to \$500) for specialty drugs.
 - b. HDHP Participants: preventive prescription drugs (as determined by the University) shall be provided at no cost; 10% co-insurance on all other prescription drugs until deductible is met. After the deductible is met, the co-pay on prescription drugs (other than for the preventive drugs) for retail (30 day supply) will be \$10 for generic, \$35 for approved list (formulary) brand, \$60 for non-formulary brand, and 25% co-insurance (up to \$250) for specialty drugs. Mail order (90-day supply) co-pay will be \$20 for generic, \$70 for approved list (formulary) brand, and \$120 for non-formulary, and 50% co-insurance (up to \$500) for specialty drugs.

C. Election and Waiver

1. A bargaining unit member married to an SSU employee may elect the family plan

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option or the employee plus one option and will advise the University which member will make the contributions. Faculty married to other SSU employees are not required to make health care contributions if their spouse is contributing to the SSU health care plan.

2. Those eligible bargaining unit members who wish to waive participation in the University's health insurance plan(s) and who demonstrate coverage under another plan (other than an SSU health plan) and elect this option during the new-hire and annual open enrollment period will receive \$150/month if they were otherwise eligible for single coverage, \$200/month for Employee + 1, or \$250/month for family coverage for waiving such participation. Payment will be made monthly.

D. Insurance Committee

The University will convene during fall semester an Insurance Committee. The Committee will be composed of four (4) representatives appointed by the SEA, two (2) representatives appointed by the CWA, two (2) representatives appointed by the UAA, and two Presidential appointees. The Committee shall elect its own chair each year. The purpose of the Committee will be to review and explore options for managing and containing medical and other insurance costs, review competitive bids for insurance carriers, and report its findings and recommendations to the President, SEA, CWA and UAA.

E. Life Insurance

The University shall provide \$50,000 Basic Life and Accidental Death & Dismemberment Insurance coverage for eligible faculty members.

F. Domestic Partners

A bargaining unit member who has shared a committed, on-going domestic relationship with a same-sex partner for not less than the continuous preceding twelve (12) months and meeting all eligibility criteria established by the University will be offered benefits as determined by the University until the 2016 Open Enrollment period. After which, all bargaining unit members must be legally married to receive spousal health insurance benefits in accordance with this Article.

G. University Health Clinic

Bargaining unit members may utilize the University's Health Clinic as needed for the payment of \$20/visit. Other charges may be required depending upon the services provided.

Section 3. Flexible Spending Account (FSA).

- A. Bargaining unit members enrolled in the PPO Medical Plan may participate in the University's Flexible Spending Program (FSA), which permits participants to set up a

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payroll deduction for reimbursement of eligible health care expenses and/or dependent care expenses on a pre-tax basis in accordance with the rules and regulations under Internal Revenue Code Section 125.

- B. The FSA option will be reviewed in 2017 to determine its impact upon the calculation of tax obligations required under the Affordable Care Act (ACA). This option may be eliminated beginning 2018 if it is determined the University will be subject to taxation.

Section 4. Implementation of Insurance Benefits.

- A. Insurance coverage shall be in effect during the twelve (12) months of the year whether or not a bargaining unit member accepts a summer contract, or is paid on a nine (9) or twelve (12) month basis.
- B. Bargaining unit members who separate employment either voluntarily or non-voluntarily from Shawnee State University may continue their insurance benefits per the Consolidated Omnibus Budget Reconciliation Act (COBRA) legislation.
- C. Bargaining unit members employed for a single academic year shall have their insurance benefits discontinued at the end of their contract. Benefits will extend through the summer only if rehired for an additional consecutive year prior to the end of the current academic year's contract.

Section 5. Faculty Development.

- A. Bargaining unit members may apply for reimbursement for expense incurred as part of their ongoing teaching, scholarship, and/or research as defined in this agreement. This may include, but is not limited to, courses or seminars to enhance teaching qualifications, attendance and/or presentation of papers at professional conferences, acquisition of research materials, travel related to the conduct of scholarship and/or research.
- B. Faculty shall apply for such funding to the appropriate University Faculty Senate Committee.
- C. In consultation with the Provost, the Committee will award funding based on the academic merits of the program and the overall feasibility of the project. Any proposal with academic merit shall be funded in accordance with the availability of funds. Requests for funding shall be granted until funds are depleted. If more funds for projects are requested than there is availability of funds, the committee may rank projects based on overall academic merit and relevance.
- D. Application deadlines will be established and announced by the committee. No bargaining unit member may be awarded enrichment funds in two (2) consecutive academic years unless all other applications are funded and the enrichment funds are not exhausted.

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- E. The annual dollar pool for faculty enrichment shall be \$70,000 for each fiscal year of this agreement.

Section 6. Off-campus Tuition Reimbursement

- A. Bargaining unit members are eligible for tuition reimbursement for an advanced degree from a regionally accredited University as specified herein after two years of continuous full-time service at the University.
- B. The graduate course of study must be relevant to the bargaining unit member's position or taken at the request of the University. Evidence of a grade of B or better or satisfactory progress (e.g., dissertation credits as PR, etc.) is required and must be attached to a request for tuition reimbursement.
- C. Prior approvals of the course of study by the Dean and concurrence by the Provost are required. In addition, after the initial approval, subsequent requests for reimbursement for the same course of study will be submitted through the department chairperson and approved by the Dean.
- D. Any graduate degree sought by the bargaining unit member that is offered at Shawnee State University must be obtained at Shawnee State University, or at the bargaining unit member's own expense.
- E. Reimbursement shall be 100% of tuition or a maximum of \$250 per quarter hour, \$350 per semester hour. A faculty member shall not exceed four (4) hours per semester or six (6) hours per quarter of reimbursable studies.
- F. This reimbursement shall be available for the duration of the advanced degree sought (not to exceed \$2,500 per faculty member per year).
- G. Non-traditionally structured graduate programs may be reimbursed based on a pro-rated basis equivalent to the above.
- H. Only courses that contribute towards successful degree completion are eligible for reimbursement.
- I. Reimbursement is limited to one graduate-level program.
- J. A bargaining unit member awarded benefits as permitted herein must agree, in writing, to remain employed at the University for at least two (2) years from the end date of the term of the approved coursework. If not, the employee will repay the tuition reimbursement amount received. This agreement applies for all departures except the loss of position due to a reduction in force (RIF).

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Section 7. On-Campus Tuition Reimbursement.

- A. The University will reimburse bargaining unit members, their spouses, and their dependent children (twenty-four or younger) for the successful completion of undergraduate programs offered at the University using the following criteria:
- B. A bargaining unit member may be reimbursed for the successful completion of up to a maximum of six (6) credit hours per semester. All classes are to be taken on the bargaining unit member's non-work time.
- C. Spouses and dependent children twenty-four or younger of bargaining unit members may enroll in as many hours per semester as are permitted under the University academic policies. The allowance for benefits covered under this section shall be 160 credit hours per spouse or dependent child. Spouses and dependent children who exceed this limit may take one course per semester
- D. Bargaining unit members, their spouses, and their dependent children shall enroll during the regular registration processes.
- E. Programs or classes which have special admission requirements or class size limitations will be available to bargaining unit members, their spouses, and their dependent children age twenty-four (24) or younger in the same way they are available to the general student body; and they will be required to compete for admission into these programs or courses with other student applicants.
- F. Bargaining unit members must remit payment for tuition in accordance with University student payment deadlines.
- G. Upon the successful completion of attempted courses the amount of instructional, general, technology, and applicable out-of-state fees to be reimbursed shall be determined after the grades are officially posted. All other costs and/or fees are the responsibility of the bargaining unit member.
- H. The bargaining unit member, spouse or dependent child must file the Free Application for Federal Student Aid (FAFSA) and complete the verification process if necessary. Reimbursement will be equal to the billed instructional, general, technology and applicable out-of state fees less any federal, state, or scholarship funds.
- I. All necessary and required forms must be completed according to University policies and timetables.

Section 8. Other Provisions.

- A. All bargaining unit members who have retired from the University through Ohio STRS and alternative retirement plans (ARP), with (5) consecutive academic years of service immediately preceding retirement will be awarded the same discretionary SSU-awarded

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benefit(s) as retired university administrators by Board of Trustees policy.

- B. All bargaining unit members who have retired from the University through Ohio STRS and alternative retirement plans (ARP), with 10 years of continuous service to the University immediately preceding retirement (including those who retired prior to this contract) shall be granted the following privileges consistent with University policies:
1. Full library privileges
 2. University email access
 3. University identification card
 4. Educational benefits in accordance with Article 16, Section 7, for the individual retiree only
 5. Opportunity to purchase tickets to performing arts and athletic events
 6. Opportunity to use recreational facilities at no charge
 7. Use of facilities for meetings of retired faculty members
 8. Opportunity to attend University functions including, but not limited to, commencements, holiday celebrations, alumni events, etc.

Section 9. Athletic Center/Natatorium.

All bargaining unit members and immediate family members (children must meet facility age requirements) may use the University Natatorium and the Athletic Center facilities without charge.

Section 10. Children's Learning Center.

Bargaining unit members with eligible dependent children will receive the same discount to tuition as is provided to other employees.

ARTICLE 17. LEAVES OF ABSENCE

Section 1. Paid Leaves.

A paid leave is a period of time that a faculty member is approved by the designated University official to be away from his/her job while receiving salary and benefits as provided by this Agreement. Paid leaves may be approved during fall, spring, summer semesters, or intersessions.

A. Sick Leave

1. Sick leave is the authorized absence of an individual to be away from work duties due to:
 - a. Personal illness;
 - b. Personal injury;
 - c. Medical, dental or optical examination or treatment;
 - d. Exposure to a contagious disease that poses a reasonable risk of contagion to the University. The University may request documentation in such cases;
 - e. Medical emergencies, illness, or death of a member of the immediate family that includes: grandparents, brother, brother-in-law, sister, sister-in-law, daughter-in-law, son-in-law, father, father-in-law, mother, mother-in-law, spouse, child, grandchild, legal guardian or other person who stands in the place of a parent.
2. Sick Leave Credit – Upon hire the University will credit sick leave up to a maximum of 120 hours to the faculty member’s sick leave account. In accordance with Ohio law, if the faculty member elects to do so and informs the Department of Human Resources within 90 days of his/her employment date, he/she may elect to transfer any unused and unpaid sick leave balance above 120 hours from a state of Ohio agency or public institution of higher education to their Shawnee State University sick leave account. This amount will be in addition to the University credited amount.
3. After the first year of employment and thereafter, sick leave shall accumulate evenly per pay period. A total of 120 hours may be earned per academic year. Faculty members’ sick leave for a 12-month period is permitted to accumulate over 9 months.
4. There will be no maximum on the number of sick leave hours which may be accumulated from year-to-year.
5. A faculty member may request the use of accumulated but unused sick leave during any term (including summer) in which the faculty member has a regular teaching assignment.

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6. A continuous period of sick leave commences with the first day of absence and includes all subsequent days except Saturday, Sunday, or holidays until the faculty member returns to work (assuming no regular classes are scheduled).
7. The process to follow for the utilization of sick leave is:
 - a. Except in the case of an emergency, the faculty member shall contact the Department Chairperson or department secretary by telephone or electronic message prior to the scheduled start time that he/she is unable to meet his/her classes, office hours, labs, etc. due to illness. In cases where the bargaining unit member is incapacitated, he or she may designate a family member or third party representative if a family member is not available to communicate with the University.
 - b. If the bargaining unit member has reason to believe that the required sick leave will last longer than one day, the bargaining unit member will make reasonable efforts to communicate this need to the Department Chair or secretary. If it becomes necessary to extend leave beyond the initial period, the bargaining unit member will contact the Department of Human Resources. If the Department Chairperson or Dean determines that it is necessary to provide coverage for the bargaining unit member's classes, it shall be the responsibility of the Department Chairperson or Dean to arrange for such coverage.
 - c. The faculty member must submit a Request for Leave form (found on the Department of Human Resources web site) to the Department Chairperson and/or the Dean in advance of scheduled appointments or when the faculty member knows that sick leave will be needed.
 - d. Within three (3) days of returning to work the faculty member will submit the Request for Leave form to the Department Chairperson who will forward the form to the Dean. The Dean's office will provide the form to the Department of Human Resources.
 - e. Proper submission of this form is necessary for the accurate crediting of sick leave time is the responsibility of the faculty member and that failure to submit the Request for Leave form to the Department Chairperson may result in loss of payment for the time missed.
 - f. Disciplinary sanctions shall be applied only in cases of deliberate abuse of sick leave or deliberate violation of this Article.
8. When the faculty member requests the use of sick leave for an illness or injury requiring medical care after five (5) consecutive days the faculty member may be requested to submit a physician statement to the Department of Human Resources stating the general nature of the illness, date of medical treatment, and the conditions under which the employee is released to return to work or a statement from the

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- attending physician verifying the illness or injury of the employee's immediate family.
9. In situations involving Family Medical Leave (FML), (serious health conditions of three or more days), or habitual absences of less than five (5) days, a doctor statement may be required upon the request of the Department Chairperson, Dean, or Department of Human Resources. The University may require the faculty member to submit to a physical examination with a physician of the University's choosing and the University will pay all costs incurred in obtaining the physical examination.
 10. Accumulated sick leave shall be reduced in the following manner:
 - a. The sick leave account will be reduced by the actual number of hours a faculty member was absent from assigned duties. Assigned duties include, but are not limited to, classroom or lab instruction, clinical supervision, office hours, and department/committee meetings.
 - b. Full week – The sick leave account will be reduced by forty (40) hours when a faculty member misses all assigned work in a week and/or is on continuous sick leave for multiple weeks.
 11. Sick leave granted by reason of death in the immediate family shall not exceed five (5) days. Any days beyond five (5) must receive prior approval from the Dean with notification to the Department Chairperson. Such request will not be unreasonably denied.
 12. Non-compliance with sick leave rules and regulations may result in the faculty member not receiving pay for the sick leave requested. Willful misuse of the sick leave provision herein may be considered grounds for disciplinary action in accordance with Article 18.
 13. After three consecutive working days of a bargaining unit member's absence from required duties without notice, the Department Chairperson shall make a reasonable effort to determine the status of the bargaining unit member. If the Chairperson is not able to locate the bargaining unit member, he/she will notify the Dean who will inform the Department of Human Resources. If within two additional consecutive working days, the University is unable to make contact, the University may presume that the bargaining unit member has abandoned his or her position without use of the procedures in Article 18. The University shall notify the bargaining unit member in writing of its finding of abandonment by certified mail and provide the Association with a copy of this notice. Absent exigent circumstances, the bargaining unit member shall have five (5) working days after the postmarked date of this notice to explain the circumstances in writing and/or in a conference with the Dean. An individual and/or the Association may grieve a negative decision. The burden of proof will be on the faculty member.
 14. An accounting of sick leave days accumulated shall be maintained by Human

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Resources and shall be available to the individual faculty member upon request.

15. Sick Leave Payout

- a. Upon retiring from active service with at least ten (10) years of service (any combination with the University and its predecessor institutions), the faculty member may elect to be paid one-fourth (1/4) of the accrued but unused sick leave credit (but in no case more than one-fourth (1/4) of 160 days, or 320 hours). This payment will be based upon the faculty member's rate of pay at the time of retirement. The remaining balance of unpaid leave will be available for use if the retired faculty member is rehired the academic year immediately following retirement (unless the position does not provide sick leave).
- b. Such payment will be made only once to any faculty member. That is, such a member who returns to University service after retiring may accrue and use sick leave but may not convert the unused sick leave at the time of the second retirement.
- c. For the purpose of sick leave payment the academic year shall be considered 165 days (1,320 hours).

Example:
$$\frac{\text{accumulated sick leave hours} \times 25\% \times \text{current salary}}{1,320 \text{ hours}} = \text{Sick Leave Payout}$$

- d. Sick leave pay out does not apply to any termination or separation other than regular retirement.

B. Personal Leave Days

1. Faculty members shall be granted two (2) days of paid personal leave per academic year. Such personal leave days shall be used only with prior notice of the Department Chairperson by submission of the Request for Leave form. The Department Chairperson shall forward the Request for Leave form to the Dean. The Dean's office will provide a copy of the form to the Department of Human Resources for record-keeping purposes. A request for the use of personal leave days shall be made at least three (3) days prior to use, except in emergency situations.
2. Except in emergencies, a personal day may be used at any time other than one day before or after a scheduled holiday, unless approved by the Department Chairperson.
3. Unused personal leave days shall not be carried forward to subsequent years.
4. Personal leave days shall be granted in whole day increments.

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C. Jury Duty or Court Summons

1. The University shall grant leave with full pay to any faculty member who:
 - a. Is summoned for court duty or jury duty by a court of competent jurisdiction; or
 - b. Is subpoenaed to appear before any court, commission, board or other legally construed body authorized by law to compel the attendance of witnesses where the employee is not a party to the action.
2. Evidence in the form of a subpoena or other written court notification shall be presented to the Department Chairperson as far in advance as possible and forwarded to Human Resources for record-keeping purposes.
3. Any compensation or reimbursement for jury duty or for court attendance compelled by subpoena, when such duty is performed during an employee's normal working hours shall be remitted to the University's Bursar Office.

D. Family Leave.

1. Birth Leave. Available sick leave may be used for the temporary disability associated with childbirth, both pre-natal and postpartum. Such leave shall be treated in the same manner as all other use of sick leave.
2. Family care. Available sick leave may be used for the purpose of providing care for a newborn child, newly adopted child, care of an immediate family member.
3. Family leave runs concurrent with Family Medical Leave (FML). Faculty members eligible for FML must certify for such leave with the Department of Human Resources.

E. Military Leave.

1. A faculty member who is a member of the Ohio organized militia or members of other reserve components of the armed forces of the United States, including the Ohio National Guard is entitled to be paid military leave in accordance with Ohio law.
2. To be eligible for this leave and in accordance with federal and state law, the faculty member is expected to provide the order or written statement from the appropriate military commander to his/her department chairperson which shall be forwarded to Human Resources.

F. Paid Professional Leaves.

1. A paid professional leave may be partial or full and requires advance approval from the Provost.

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2. The primary purpose of paid professional leave is faculty development: advancing the academic competence of faculty members and enhancing their contribution to the University in teaching, scholarship, and service.
3. A faculty member requesting tuition reimbursement with a partial leave (reduced work load) or a full professional leave will continue to receive pay and University-provided benefits. The tuition reimbursement payment will be in accordance with Article 16. If a faculty member returns mid-semester, or later, he/she may be assigned modified duties by his/her department chairperson or Dean.

G. Paid Sabbatical Leave.

1. Tenured or continuing contract faculty members (with at least seven (7) years employment at Shawnee State University) are eligible to request a paid sabbatical leave following the guidelines as established by the University Faculty Senate in consultation with the Provost and in accordance with the policy approved by the Board of Trustees and requirements of Ohio Revised Code 3345.28.
2. A paid sabbatical leave may take the form of:
 - a. A full semester at 100% salary and benefits; or
 - b. An academic year at 66% of salary and benefits
3. Upon fulfillment of the sabbatical leave, recipients will submit a report to the President that conforms to requirements of ORC 3345.28 and agree to remain employed at the University for one (1) additional academic year. If the faculty member does not fulfill this requirement, s/he shall be required to refund the compensation received during the sabbatical.
4. Upon return to service, the faculty member shall be restored to his/her former teaching assignment, and shall suffer no loss of rank or contract status.
5. If applicable, required tuition and mandatory fees for degree or course of study will be reimbursed (subject to receipts verifying the employee's payments).

H. Association Leaves.

1. Association leave is leave with pay to attend the conventions or meetings of the NEA or the OEA. Association leave shall be limited to five (5) days per fiscal year for the faculty as a whole and shall not include travel expenses or conference fee reimbursement.
2. The faculty member shall provide a minimum of ten (10) working days written notice to the department chairperson who will inform the Dean prior to taking such leave.

ARTICLE 17**Section 2. Unpaid Leaves.**

An unpaid leave is a period of time that a faculty member is authorized by the designated University official(s) to be away from his/her primary job while maintaining the status of employee but without pay.

A. Family Medical Leave (FML)

1. Family Medical Leave (as provided by the Family Medical Leave Act) is unpaid leave but shall be utilized and applied concurrently with available sick leave for a serious health condition or disability greater than three (3) days, including paid leaves outlined in Section 1 of this Article (e.g., birth and family care).
2. Eligible faculty members shall be entitled to receive leave up to twelve (12) weeks of paid sick leave and/or unpaid leave for:
 - a. birth of a child and to care for the newborn child;
 - b. placement with the faculty member of a child for adoption or foster care;
 - c. a faculty member's own serious health condition (including pregnancy) or to care for the faculty member's child, spouse, or parent with a serious health condition;
 - d. qualifying exigency arising out of the fact that the faculty member's spouse, child or parent is a covered military member on active duty, or has been called to active duty, in support of a contingency operation; or care for a covered service member with a serious injury or illness if the faculty member is the spouse, child, parent, or next of kin of the service member.

B. Unpaid Medical Leave

1. Upon exhaustion of sick leave and unpaid FML leave as described in this Article, a faculty member may request and shall be granted a leave of absence without pay for a documented medical condition.
2. The faculty member must provide a physician's statement (stating the general nature of the illness, date of medical treatment, and the conditions under which the employee is released to return to work or a statement from the attending physician verifying the illness or injury of the employee's immediate family) with such application at least one (1) week prior to the effective date of the request, except in cases of emergency. The University may request a second opinion from a physician of the University's choosing. Costs associated with obtaining such opinion shall be paid by the University.
3. The faculty member will notify the University of his/her need to utilize medical leave thirty (30) working days prior to the beginning of each semester in which the employee is on unpaid leave status.

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4. All such unpaid medical leaves (upon exhaustion of sick leave and FML) will be based on the projected return date provided by the attending physician, and shall not exceed one (1) academic year.
5. While on an approved unpaid medical leave, the faculty member will retain all University-provided benefits except for sick leave accrual and retirement contributions based on salary, provided the faculty member timely remits the established employee contribution payments for a period of six (6) months. The University will consider extending up to an additional six months depending upon the circumstances. Such requests will not be unreasonably denied. If the employee payment contributions are not timely remitted, the employee will forfeit University-provided health plan coverage and may elect health plan continuation under COBRA at 102% of the full cost of the University's health plan.

C. Voluntary Professional Leave (Unpaid)

1. A tenured, continuing contract and tenure-track faculty member who has held such status with the University for at least two (2) years shall be eligible to request a professional leave of absence without pay for approved purposes of advanced study, an exchange teaching assignment, travel, government service, or any other professional experience which is related to the field of teaching, or which will improve professional competence as a University faculty member. Such leave will be for a minimum of one (1) semester to a maximum of one (1) academic year.
2. Written request for unpaid professional leave shall be submitted to the Dean for administrative action one (1) year in advance. The leave must be recommended by the faculty member's Department Chairperson and Dean, and approved by the Provost.
3. No University-provided benefits including health insurance are available under this leave. While on unpaid professional leave, the faculty member will be able to purchase health insurance as provided by COBRA provided the faculty member timely remits the employee-contribution payments. The time spent on an approved leave shall be counted as teaching time for purposes of seniority and salary determination.
4. Upon return to service, the faculty member shall be restored to his/her former teaching assignment and shall suffer no loss of rank or contract status.

D. Other Unpaid Leaves

1. Eligible faculty members shall be entitled to receive military leave under the federal and Ohio Uniformed Services Employment and Re-employment Rights Act (USERRA).
2. Faculty who are placed on unpaid suspension per Article 18 shall continue to receive University-provided benefits, except for sick leave accrual and retirement contributions based on salary

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Section 3. Procedures

- A. A Request for Leave Form (found on the Department of Human Resources web site) is required to obtain approval for leaves of absence as provided by this Article. These forms must be completed by the faculty member, signed by the Department Chairperson, forwarded to the Dean who will submit to the Department of Human Resources by the end of the pay period in which the absence occurs.
- B. Return to Work: Upon return to active service, the faculty member shall be restored to his/her former teaching assignment and shall suffer no loss of rank or contract status except that a faculty member who returns from leave mid-semester or later may be assigned modified duties by the department chairperson or Dean.
- C. Declination of Overload and Summer Opportunities: A faculty member on an approved leave of absence will be deemed to have declined all offered summer teaching and/or overload opportunities which occur during the period of the leave.
- D. Continuous Service: Time on approved unpaid leaves of absence shall not break the continuous service seniority of an individual on such leave so long as the faculty member returns to work with no break and immediately following the approved unpaid leave. However, time on such leave shall not be applied to salary schedule increments with the exceptions of:
 - 1. An increment due an individual who returns from leave and worked at least 120 days in the year prior to commencing such leave; or
 - 2. An increment due an individual who returns from an approved unpaid professional leave or USERRA leave as defined in this Article.

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ARTICLE 18. COMPLAINT RESOLUTION AND DISCIPLINARY PROCESS

Section 1. Complaint Resolution.

A. Complaint Process and Scope

1. The purpose of this complaint process is to provide a mechanism to resolve complaints against bargaining unit members in a matter that is consistent with due process and sound academic practice.
 - a. Any matter that has the potential to result in disciplinary sanctions against a bargaining unit member shall be addressed in accordance with the standards of these procedures.
 - b. Complaints may be addressed through informal mechanisms. The bargaining unit member shall have the right to refuse any and all informal resolutions and to pursue his/her rights under this Agreement.

B. Complaint Review Process

1. Upon notice of a complaint regarding a bargaining unit member, the Dean of the College of the accused bargaining unit member will assess the complaint and determine the appropriate path for review and/or resolution. Upon assessment of the complaint, the Dean shall do one of the following:
 - a. If the Dean determines that the matter does not merit a disciplinary investigation, the Dean or Dean's designee will meet with the affected member to discuss the matter and attempt to achieve an informal resolution.
 - b. If the matter involves a possible violation of the University's policy that addresses unlawful discrimination and harassment the Dean will direct the complaint to Human Resources. Bargaining unit complainants who believe they have been the recipient of discriminatory conduct may also complain directly to Human Resources. Discipline resulting from a determination of violation of this Policy shall be in accordance with this Article.
 - c. If after a preliminary review the Dean determines that the complaint could result in corrective or disciplinary action, the Dean will initiate either an informal or formal action (see Section 2 of this Article) to address the matter as deemed appropriate.

Section 2. Disciplinary Actions.

- A. The University subscribes to the principles of progressive and/or proportional discipline through informal and formal actions. The University shall not impose formal discipline except for just cause. It is the responsibility of the University to demonstrate just cause.

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B. Informal Actions

1. Informal actions are not subject to the grievance process or entered into the bargaining unit member's official personnel file. The bargaining unit member may provide a rebuttal verbally or in writing.
2. If the complaint or supervisory concern appears to be an appropriate matter to be addressed through informal action(s), the Dean may address the complaint in one or more of the following ways:
 - a. Verbal counseling, which may be addressed by the Dean or Department Chairperson;
 - b. A verbal reprimand;
 - c. An advisory letter from the Dean or Dean's designee.

C. Formal Actions

1. Formal actions will result in documentation included in the bargaining unit member's official personnel file which shall be maintained in the Provost's Office and are subject to the grievance process. Formal actions may include the following:
 - a. A written warning from the Dean that is entered into the faculty member's personnel file
 - b. Placed on an improvement plan;
 - c. Suspension for up to one academic year with or without pay including suspension from summer school or overloads;
 - d. Termination during the contract of any bargaining unit member.
2. An improvement plan may also be utilized along with a written warning or suspension.
3. Just Cause Standard for Formal Action(s)
 - a. Formal actions shall be imposed only for just cause. Just cause is a reason related directly and substantially to the professional fitness of the collective bargaining unit member one or more of the following areas:
 - i. Serious professional misconduct as defined in Article 7 (Academic Responsibility) and/ or other serious violations of this Agreement or relevant Board Policies;
 - ii. Misrepresentation of qualifications or credentials pertaining to employment at

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the University;

- iii. Plagiarism or other serious dishonesty related to teaching, scholarship, or professional service;
- iv. Incompetence in performance that is directly related to the bargaining unit member's responsibilities to the University;
- v. Consistent inability or refusal to fulfill responsibilities to the University;
- vi. Personal conduct
 - (a). that represents a serious and ongoing threat to the health or safety of any person in the University community, or
 - (b). that manifests severe or continuing harassment or discrimination, or
 - (c). that otherwise substantially impairs the bargaining unit member's fulfillment of responsibilities to the University;
- vii. Persistent or malicious conduct that directly obstructs the performance of instructional or scholarly programs of the University;
- viii. Conviction of felony;
- ix. Permanent revocation of required professional licensure.

D. Administrative Leave Pending Investigation

- 1. The Provost may place the bargaining unit member on administrative leave with pay and benefits when s/he determines the presence of a bargaining unit member:
 - a. Presents a threat to the health or safety of the bargaining unit member or anyone in the University community; and/or
 - b. Represents a threat of significant disruption or significant interference with the normal and lawful activities of the University community, property, and/or the educational and operational systems.
- 2. The bargaining unit member may remain on administrative leave pending the disposition of the disciplinary process provided in this Agreement.
- 3. The Provost may also direct that the bargaining unit member be barred from University property and/or access to University systems discontinued.

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Section 3. Dean's Formal Investigation.

A. Initiation of Dean's Formal Investigation

If after the preliminary review of a complaint or administrative supervisory report a formal action is believed to be warranted, the Dean will initiate a formal investigation.

1. Upon the initiation of a formal investigation, the Dean shall notify the bargaining unit member in writing, with a copy to the SEA, that a formal investigation has begun. If administrative leave in accordance with this Article is determined to be appropriate, the bargaining unit member will be notified.
2. In the event that providing the written notice to the bargaining unit member would compromise the investigation, such notice must be sent to the SEA with a rationale for the need to withhold notice to the bargaining unit member until the conclusion of the initial stage of the investigation.
3. The written notice shall include the following:
 - a. The reason for the investigation;
 - b. The right to consult with a representative of the SEA and/or OEA; and
 - c. The right to request the presence of a representative of the SEA or OEA at any meeting with the investigating officer.

B. Appointment of Investigators and Charge

1. The Dean may assign other investigators who will be responsible to investigate the complaint(s) or supervisory concern and to help assess whether a charge is warranted.
2. The Dean will make a determination as to whether a charge is warranted within twenty (20) working days of the initiation of the investigation and will notify the bargaining unit member and the Association in writing of such determination.

C. Charge Notice and Dean's Conference

1. The charge notice will specify the: charge(s), the names of the complainants (with the exception of current students whose names may be withheld until a proposal of discipline is made, if any) and a date for a conference to review the charge(s).
2. The conference shall be held within ten (10) working days of the above notice or by mutual agreement. The bargaining unit member may request a delay to this meeting, not to exceed five (5) working days if s/he needs the additional time to prepare an adequate response to the specific charges. This request shall not unreasonably be denied.

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3. At this conference, the bargaining unit member shall have the opportunity to review the specific charges and all relevant information identified to date with the assigned investigator, Dean, and/or designee, and respond to the specific charge(s). The Dean or designee shall take into account the bargaining unit member's response and evaluate each piece of information according to its own merit.
4. At the conclusion of the conference, the Dean will do one of the following:
 - a. resolve the charge(s) by mutual agreement
 - b. close the investigation without action
 - c. enact an informal action
 - d. propose formal action
 - e. determine if further investigation is warranted and if so shall notify the bargaining unit member in writing within five (5) working days
 - i. The Dean may amend the charge(s) during the investigation. If the Dean does so the Dean shall provide notice to all parties and afford the bargaining unit member additional time to respond.

D. Conclusion of Dean's Investigation

1. The entire investigation is expected to be closed within sixty (60) calendar days after the date the investigation was initiated, unless an extension is agreed to by both parties. Such extension shall not be unreasonably denied.
2. If the Dean determines that a formal action is not warranted the Dean shall provide the bargaining unit member, the Association and the Provost with a written report.
3. If at the end of the investigation, the Dean determines that a formal action is warranted, the Dean shall provide the bargaining unit member, the Association and the Provost with a written report within thirty (30) days. This report shall state the investigative findings, the evidence considered, and the proposed formal action.
 - a. The findings shall be based on the original and/or previously amended charge(s) and information considered which is relevant to the original and/or previously amended charge(s).

Section 4. Provost's Conference and Decision.

- A. Within five (5) working days of the issuance of the Dean's report the Provost shall schedule a formal disciplinary conference with the bargaining unit member, a representative of the

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Association and the investigator. The bargaining unit member may decline attendance and/or respond to the Dean's report in writing.

- B. At this conference both the investigator and the bargaining unit member shall be afforded the opportunity to make a statement. The Provost shall insure that both parties are fully heard. The Provost may ask questions of either party.
 - 1. At the conclusion of the conference the Provost may request additional information from either party within five (5) working days relevant to the original and/or amended charge(s). Any additional information shall be provided to all parties and all parties may have a chance to respond in writing.
- C. The Provost shall make a decision within ten (10) working days of the conference (however if additional information is requested by the Provost, the Provost will have mutually agreed upon additional time). If the conference was declined, the Provost has fifteen (15) working days from the date of receipt of the Dean's report to make a decision.
- D. The Provost's decision will be based on the original or amended charge(s) and may include any of the following:
 - 1. Dismiss the charge(s) in full or in part
 - 2. Uphold the charge(s) in full or in part
 - 3. Determine and apply formal or informal action(s).
- E. The Provost's decision shall be the final step in the disciplinary process; this decision may be grieved.

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ARTICLE 19. GRIEVANCE PROCEDURES

Section 1. Definitions.

- A. A grievance is a claim of any alleged violation, misapplication or misinterpretation of this negotiated Agreement.
- B. A grievant shall be any bargaining unit member, group of bargaining unit members, or the Association acting on behalf of itself or bargaining unit members.
- C. The term “days” shall mean working days in which the University is open for business during the academic year (spring and fall semesters). Working days does not include Summer Semester, Scheduled Breaks, Intersession(s), Saturdays or Sundays, or days when classes are not in session.
- D. The time limits set forth in this article may be extended by mutual agreement in writing by the grievant and the University.

Section 2. Purpose.

The purpose of this grievance procedure is to create a collegial mechanism for justly resolving disagreements with respect to specific claims of improper application, violation or misinterpretation of this Agreement. The Parties agree that informal actions under Article 18 are not grievable.

Section 3. Grievance Procedure.

- A. Nothing herein contained in this grievance procedure shall be construed to prevent an individual grievant from first seeking to informally resolve a grievance if he/she chooses, provided that such an informal grievance settlement is not inconsistent with the terms of the Agreement and the grievant has not initiated the formal grievance process (i.e. filed a Grievance Form).
- B. In the event that the above informal step is unsuccessful or not exercised, the grievant may contact the Association to file a grievance on their behalf. The Association shall distribute the grievance form to the appropriate University Official (ref. par G).
- C. Formal grievances must be filed within forty-five (45) working days from the date in which the grievant knew or the date by which a reasonable person should have been aware of the incident.
 - 1. A grievance must identify and reference a specific Article(s) and Section of the Agreement alleged to have been violated, misapplied, or misinterpreted.
 - 2. New issues that may emerge after an initial grievance has been filed will be treated as a separate grievance unless the parties mutually agree to consolidate into one grievance.

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- D. Insofar as practicable, grievance conferences will be scheduled so as not to interfere with the class or work schedule of the grievant or administrative officers whose presence will be required. A grievant shall have the right to be present at any level in the grievance procedure without loss of pay.
- E. Any grievance not acted on in the time limits provided in this article is automatically appealed to the next level, unless the timeline has been mutually extended.
- F. In cases where grievances are timely filed prior to the last full day of scheduled classes of Spring Semester, working days shall end on the date grades are due and recommence and continue as of the first full day of scheduled summer classes. Both sides may agree to suspend the grievance clock during the summer.
- G. Formal grievances will typically be filed at Level I with the Dean. By mutual agreement of the Association and the University a grievance may be initiated at any higher applicable level.

Section 4. Level One – Dean.

- A. A meeting shall take place between the grievant and Dean at a time mutually agreed to by all parties, but no later than ten (10) days following the date the grievance was filed. A grievant may be accompanied by a witness(es), one (1) Association representative of his/her choice and an OEA Representative. The University Administration reserves the right to have comparable representation present.
- B. If the Dean lacks authority to resolve the grievance, the Dean will forward the grievance to Level 2 within ten (10) working days and notify all parties that the matter has been forwarded.
- C. A written answer will be given by the Dean or (his/her designee) no later than ten (10) days after this meeting.

Section 5. Level Two – Provost.

- A. In the event that the formal grievance is not resolved to the satisfaction of the grievant at Level One or the Dean lacks authority to resolve the grievance, the grievant may request within ten (10) days a Level Two meeting with the Provost by filing a grievance form.
 - 1. A meeting shall take place between the grievant and the Provost (or his/her designee) at a time mutually agreed to by all parties, but no later than ten (10) days following the date the grievance was filed with the Provost.
 - 2. A grievant may be accompanied by a witness(es), one (1) Association representative of choice, and/or an OEA Representative. The University Administration reserves the right to have comparable representation present. The parties may mutually agree to expand the number of representatives for each side.

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- B. If the Provost lacks authority to resolve the grievance, the Provost will forward the grievance to Level 3 within ten (10) working days and notify all parties that the matter has been forwarded.
- C. Any grievance resulting from formal disciplinary actions addressed in Article 18 (Complaint Resolution and Disciplinary Process) of this Agreement will be initiated at the Provost level.
- D. A written answer will be given by the Provost or his/her designee within ten (10) working days after this meeting.

Section 6. Level Three – President.

- A. In the event that the formal grievance is not resolved at Level Two, the President will review the Provost's decision. The Association or grievant may request a Level Three meeting with the President by forwarding the grievance form within fifteen (15) working days of the Provost's response.
 - 1. A meeting shall take place between the grievant (or his/her designee) and the President (or his/her designee) at a time mutually agreed to by all parties, but no later than fifteen (15) working days following the date the grievance was filed with the President.
 - 2. A grievant may be accompanied by a witness(es) and one (1) Association representative of choice and an OEA Representative. The University Administration reserves the right to have comparable representation present. The parties may mutually agree to additional representatives for each side.
- B. A written decision will be given by the President within fifteen (15) work days after this meeting.

Section 7. Binding Arbitration.

- A. Within twenty (20) working days after receipt of the President's decision the Association may file a demand for arbitration to the American Arbitration Association (AAA) with a copy to the University President.
- B. The SEA representative and the University President (or his/her designee) will select an Arbitrator pursuant to the voluntary selection rules of the American Arbitration Association (AAA) with the following understandings:
 - 1. The arbitrator will not add to, subtract from, or otherwise change any provisions of this Agreement or the ORC not otherwise superseded by this Agreement. The decision of the arbitrator shall be final and binding upon both parties. The arbitrator shall be requested to issue his/her decision within thirty (30) calendar days after the conclusion of testimony and argument.

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2. Any award involving a salary adjustment shall be limited to the life of the contract. All other awards shall be limited to a period not to exceed sixty (60) calendar days from the filing of the grievance.
3. The costs of the services of the arbitrator, and the cost of the hearing room, if any, shall be shared equally by the University and Association.

Section 8. Miscellaneous.

- A. Copies of all written University decisions shall be given to the grievant and the Association President.
- B. Any grievance not appealed within the time limits set forth above shall be considered settled on the basis of the last decision.
- C. No reprisal of any kind shall be taken by or against any participant in the grievance procedure by reason of such participation.
- D. By mutual agreement of the Association and the University, a grievance may be initiated at any higher applicable level.
- E. The grievant may withdraw the grievance at any level without prejudice with the understanding that if the same grievance is filed at a later date outside the time limits as defined in the grievance process, it will be considered untimely.
- F. A copy of the grievance form shall not become a part of the unit member's personnel file unless the grievant, SEA and University agree otherwise.

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ARTICLE 20. DISTANCE LEARNING

Except as provided for below, there is no difference between distance learning and traditional courses in terms of this Agreement and University policies.

Section 1. Definitions for Internet Based Distance Learning.

- A. Online Course: any course offered by the University in which 80% or more of the course, the class meetings and/or instructional materials are online for access from on and/or off-campus sites. In an online course, students may be required to come to campus for exams, class meetings, orientations, labs, or other purposes; however, the clear majority of the work of the course will be online. Distance Learning courses include those that utilize a University-approved learning management system (LMS) to access or facilitate videoconferencing, teleconferencing, mail (email) correspondence, etc.
- B. Blended Learning Course (also known as Hybrid or mixed mode): any course offered by the University in which 30-79% of class meetings and/or instructional activities are replaced with online instruction. In a blended learning course, students may be required to come to campus for exams, class meetings, orientations, labs, or other purposes.
- C. Web-enhanced Course: any course offered by the University in which less than 30% of the class meetings are replaced with online material. This category will include all courses utilizing the University-approved course management system or other online materials for supplementary purposes even if no class meetings are replaced with online activity.

Section 2. Non-internet Based Distance Learning.

- A. Non-internet based distance learning shall include but not be limited to all courses offered by the University which utilize videoconferencing, teleconferencing, mail correspondence, videotape correspondence, or other non-computer based means of teaching in place of one or more in-class meetings for some or all students in a section.
- B. Procedures
 - 1. Distance learning courses shall be subject to all policies of the UFS, EPCC, General Education Advisory Committee (GEAC), Distance Learning Committee and other University governance structures to which traditional courses are subject.
 - 2. All blended and online courses will be reviewed and approved in accordance with the following:
 - a. Existing Online Courses: will be reviewed and must have completed the UFS process no later than the end of spring semester 2016. Any existing online/blended courses not approved by this date will go through the procedures for new online/blended courses.

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- b. Existing Online Courses in Accredited Online Programs: will be verified in an expedited fashion by the Distance Learning Committee.
- c. New Online Courses: prior to offering any course online which has not been previously offered through Distance Learning, the course shall be submitted to the UFS Distance Learning course approval process.
- d. Following this initial review, all existing distance learning courses shall be submitted for review and approval to the Distance Learning Committee at least once every three (3) years.
- e. Any distance learning course not reviewed and/or updated within three years of development will no longer be able to be offered as a distance learning course.

Section 3. Ownership, Copyright, and Intellectual Property.

A. University Owned Courses. For the purposes of facilitating distance learning initiatives:

- 1. In such case that the University determines that a course will be offered for redesign and/or development as a distance learning course by a bargaining unit member, the following shall apply:
 - a. The University may offer a supplemental contract to a bargaining unit member for development of a distance learning online or blended learning course.
 - b. Distance learning materials may include but not be limited to entire courses, handouts, software, or other aids.
- 2. Compensation shall be structured as follows:
 - a. If the bargaining unit member is certified via a University-approved distance learning certification program and has previously developed a distance learning course compensation for a newly developed course will range from \$3,500 - \$4,500, based upon course complexity and as determined by the Provost in consultation with the Distance Learning Committee. Release time may be awarded for the maintenance and updates of the course as determined by the Provost in consultation with the Distance Learning Committee.
 - b. If the bargaining unit member is not certified and requires completion of University-approved distance learning certification training, compensation will include:
 - i. University-paid certification distance learning training
 - ii. Payment in the range of \$2,000 - \$3,000 based upon course complexity and as determined by the Provost in consultation with the Distance Learning

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Committee. Release time may be awarded for the maintenance and updates of the course as determined by the Provost in consultation with the Distance Learning Committee.

- c. Development of such courses must occur at least one term before the course is offered.
- d. The University will retain ownership of distance learning materials developed for such courses.
- e. The University shall not sell such courses to third parties.
- f. Any University faculty member or adjunct may, at the discretion of the University, utilize such materials in teaching.

B. University External Purchase of Distance Learning Course

1. In accordance with the UFS course approval process, the development by or purchase of an online course may only be undertaken by persons outside of the University when the qualified bargaining unit member declines or is unable to develop such course or a qualified bargaining unit member is unavailable.
2. Purchase of commercially developed ancillary software is not considered “development” by persons outside the University.

C. Faculty Owned Courses

1. Faculty who develop material for use in their courses for which they have received no additional compensation whether through released time or additional pay through a special contract with the University, shall retain all property rights over such material.
2. Distance learning material owned by faculty members may not be used by other faculty, staff, adjuncts, or any University employee without the written approval of the owner. In the event that a faculty member other than the owner is assigned to teach the course, the newly assigned faculty member may not utilize any previously developed distance learning materials without the written permission of the owner.
3. If the Provost or Dean desires that a faculty member other than the original developer/owner utilize distance learning materials, either in whole or in part, developed for a course for which a faculty member was not specifically contracted by the University, the University may license the course materials from the owner under the following terms:
 - a. The owner of the material has the right to refuse to license the material to the University.

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- b. License rates shall be \$900 per thirty-six (36) month period to be remitted at the time of licensure. Additional payment will be remitted in the amount of \$300 per credit hour for one (1) section each semester and \$200 per credit hour for each additional section taught during that semester.
- c. During the term of the license, the department sponsoring the course may assign any faculty member, adjunct, or other employee to utilize the material.
- d. Upon expiration of the license agreement, the University or any of its agents must deactivate the course site and may not retain copies (electronic, paper, or other media) of any of the licensed material.
- e. During the term of the contract the University shall not distribute or re-license the course or its relevant material to a third party without the express approval of the faculty member.
- f. Faculty development of distance learning material shall be subject to appropriate University policy.
- g. Faculty shall be responsible for the upkeep and maintenance of faculty-owned course content/material.

D. Workload, Enrollment Limits, and Promotion

1. Workload

- a. No faculty member shall be required to teach distance courses.
- b. No faculty member may be required to develop any distance learning materials except as provided on an initial contract as provided in Article 9.
- c. Teaching a course with a distance learning component shall be considered part of a faculty member's normal contractually defined workload.
- d. No additional contract hours shall be earned for teaching web-enhanced, blended learning, online, or non-internet based distance learning classes.
- e. No additional contract hours shall be earned for developing distance learning materials for teaching a faculty owned course.
- f. Development of a University owned course shall be construed as outside of the normal workload and compensated as set forth in this Article.

2. Enrollment Limits

- a. Except for enrollment limits established in other sections of this Agreement,

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enrollment for online or blended learning courses will not exceed twenty-six (26) students unless agreed to by the faculty member teaching the course, and the Provost.

- b. Faculty may be scheduled to teach more than one section of a blended learning or online course but each section will count in the faculty member's normal workload.

3. Promotion

Development and teaching of online, blended learning, or web-enhanced courses may be included as part of a candidate's promotion folder under teaching or professional development.

- E. Training and Support

1. Coordination of Distance Learning Program

- a. The Director of Distance Learning shall be a faculty member appointed by the Provost for a one (1) year term.
- b. The Distance Learning Committee shall make recommendations to the Provost as to who should be appointed to the position of Director of Distance Learning.
- c. If no recommended faculty member is available or willing to serve, then the Provost may appoint a faculty member who is not recommended by the Distance Learning Committee, or a qualified non-faculty member to the position.
- d. The Director of Distance Learning shall receive six (6) credit hours of release time per year, to be distributed over two semesters. Additional hours of release may be granted at the discretion of the Provost.

2. Resources and Training

The University will maintain a course (learning) management system and the necessary hardware and software to support online, blended, and web-enhanced courses. Technical support and training for the use of distance learning technology will be provided to all faculty. Training will include the introduction to best practices and the utilization of new technologies in distance learning so that the University online and distance learning offerings are high quality and current with latest developments.

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ARTICLE 21. COPYRIGHTABLE MATERIALS

Section 1. Policy Review and Recommendations.

A. The parties agree to:

1. Submit the IP Task Force Report and Recommendations of the Task Force on *Policy 2.10, Administration of Inventions, Discoveries and Patents* (dated April 29, 2013) to the UFS and SEA for consideration,
2. Submit the Draft Policy 2.10, Copyright, Patents and Research to the UFS and SEA for consideration,
3. The UFS and SEA will establish a joint ad hoc committee to examine the above items and to develop recommendations applicable to the Policy following the UFS policy review process,
4. The review process will take place during fall semester AY15-16 and recommendations from the joint ad hoc committee shall be submitted to the Provost no later than March 2016.
5. The University will finalize the policy for submission to the Board of Trustees at their May 2016 meeting. The recommendations of the joint UFS/SEA ad hoc committee shall be attached to the draft policy.

Section 2. Copyrightable Material.

A. Copyrightable Academic Work Product:

1. Faculty shall retain the copyright to any Academic Work Product. Academic work product includes any copyrightable work which is an artistic creation or which constitutes, or is intended to disseminate the results of, academic research or scholarly study.
2. This also includes material created for teaching use in the classroom and in department programs, such as syllabi, assignments, tests and other such course materials. Materials created by faculty for distance learning are included under this category.
3. With faculty cooperation, the University may use such materials for administrative purposes, including satisfying requests of accreditation agencies for faculty-authored syllabi and course descriptions. The University will not utilize such material for profit unless specifically authorized in writing by the author(s).

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Section 3. Contracted/Shared Copyrightable Material.

Ownership of copyrightable material may be shared by the faculty member and the University when the materials support a course taught by other faculty. Any consideration for the sale or transfer of such shared material shall be in accordance with Board of Trustee policy and this agreement.

Section 4. Licensing of Course Materials.

- A. Bargaining unit members may voluntarily agree to license instructional materials created by the bargaining unit member to the University for instructional purposes related to that individual's teaching assignments at Shawnee State University.
- B. Before signing the license agreement, the bargaining unit member may elect to consult with the Association to ensure compliance with Section 2 of this Article.

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ARTICLE 22. RETRENCHMENT AND REORGANIZATION

Days in this article refer to calendar days.

Section 1. Conditions for Retrenchment.

- A. The reorganization, warehousing, or closure of academic programs that do not substantially effect currently employed bargaining unit members are not subject to this Article. In such a case, the relevant University governance procedures will be followed.
- B. The elimination or reassignment of currently employed bargaining unit members may occur under the following conditions:
 - 1. Change(s) in the University's mission and goals that are established through the University governance procedures.
 - 2. Upon determination through the normal ongoing academic program review process that a major or program is no longer viable after completion of a program improvement plan (approved by the Dean and accrediting body, if applicable) due to such factors as: a pattern of declining enrollment, loss of accreditation, licensure or regulatory changes, failure of the program to meet academic goals.
 - 3. Determination by the Provost in consultation with the Deans and department chairpersons of a need to reorganize Colleges, Departments, or make modifications to Majors or non-major (minors or concentrations) academic programs.
 - 4. The University faces the need for quick and substantial retrenchment due to documented extreme circumstances beyond the general pattern of declines in enrollment and/or income that would not allow the University to continue to operate without a reduction in force.
- C. In such cases in which bargaining unit members may be impacted such actions will be based on qualifications and seniority.
- D. Faculty may be reassigned to other Departments, Majors or non-major academic programs by mutual agreement between the bargaining unit member, the relevant Dean(s) and Provost and the relevant Departments.

Section 2. Procedures for a long range Determination of Reduction In Force (RIF).

- A. Retrenchment using the long-range process as a result of the conditions identified in Section 1.B. par. 1 through 3 may occur in academic departments, majors, minors, and concentrations as follows:

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B. Procedures:

1. The President of the University shall officially notify the following parties in writing:
 - a. The President of the SEA
 - b. The President of the Faculty Senate
 - c. The potentially impacted department Chairperson and Program Director or Coordinator
2. Upon issuance of this notice the University President shall create a committee composed of three administrators chosen by the University President and three bargaining unit members chosen by mutual agreement between the SEA President and UFS President to review the matter and develop a report to address the issues and possible alternative actions. At least one of the bargaining unit members must be from the affected unit.
3. The report shall be submitted to the University President within thirty (30) calendar days from the date of this meeting.
4. The University President will include the report along with his/her recommendations regarding proposed actions to the Board of Trustees.
5. Upon approval by the Board of Trustees, notification of layoffs or reassignments shall be provided to affected bargaining unit members one year prior to reducing faculty or closing the program and shall include a rationale for the action.

Section 3. Financial Instability.

- A. When the University reasonably foresees a significant deterioration in the financial stability of the University this Section shall apply.
- B. The University President shall notify the President of the Shawnee Education Association and the President of the Faculty Senate providing evidence that describes the financial circumstances.
- C. The University President will convene a Joint Review Committee consisting of three (3) University officials appointed by the University President and three (3) individuals selected by the Association. The committee shall elect a chair who shall be responsible for convening and presiding over committee meetings.
- D. This Joint Committee shall review the notice and the accompanying data, and any other relevant documents. The committee shall make recommendations to the President concerning the financial circumstances and recommendations for methods to avoid financial exigency. These recommendations will be submitted to the President within sixty (60) days

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after convening. The President may take action upon receipt of the Joint Committee's recommendation.

Section 4. Imminent Reduction in Force.

- A. An imminent reduction in force may occur when the Board of Trustees makes a determination of financial exigency as defined in Section 1.B.4.
- B. The University President shall notify the President of the Shawnee Education Association and the President of the Faculty Senate providing evidence that supports the extreme circumstances.
- C. This notice shall include a rationale for the determination and supporting data. The Provost shall schedule a meeting to discuss the matter and solicit possible alternative actions with the UFS and Association President to ascertain if it is possible to address the issues without a reduction in force. Such alternative proposals may be submitted in writing to the Provost within 15 calendar days after this meeting.
- D. Within fifteen (15) calendar days of receipt of the Association's written recommendations, the Provost will submit the report to the University President along with the determination that a reduction in force or furloughs is necessary.
- E. The University President (or designee) will notify the Association of the final decision regarding the reduction in force.
- F. Individual notifications to affected faculty members shall be in accordance with the Procedures for Retrenchment identified in this Article.

Section 5. Procedures for Retrenchment.

The procedures to be applied under retrenchment conditions shall be as follows:

- A. In cases where a major or program is retrenched, the University will limit the impact of retrenchment to the directly affected academic unit.
- B. In all cases, bargaining unit members already employed by the University shall have a priority of employment as follows: (1) Tenured and/or continuing contract faculty in the programs and areas of academic specialization in which they were initially hired to teach or demonstrated competence based on previous teaching and/or preparation; (2) Tenure-track faculty in their specialization or area(s) of competence; (3) Full-time instructors (non-tenure) in their specialization or area(s) of competence; (4) visiting faculty and/or (5) part-time faculty.
- C. A retrenched bargaining unit member's specialization or area(s) of competence shall be based upon the individual's teaching history at Shawnee State University, relevant scholarship, and academic degree. In cases where a bargaining unit member is reassigned to

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a different department that person's credentials shall be reviewed by the relevant Department Chairperson and faculty.

- D. If retrenchment occurs, the University shall make every effort to consolidate part-time positions into full time positions in order to accommodate a retrenched bargaining unit member in his or her specialization or area(s) of competence.
- E. The University shall make every effort to relocate displaced faculty into other faculty positions, administrative, or staff positions needing personnel as the faculty member's qualifications permit. If a shift involves movement to an administrative or staff position, the salary and other conditions of employment shall not exceed those which are shown in the guidelines for the administrative or staff position. If the appointment is a full time faculty assignment, the rank and salary shall be the same as held by the faculty member being transferred.
- F. Displaced faculty who file a complete, up-to-date dossier with Human Resources will be considered for such positions by submitting a formal application for a period of one (1) year following the date of retrenchment. Consideration will be given for faculty openings for an additional three (3) years upon receipt of notification of interest by the displaced faculty member.
- G. A faculty member whose academic unit has been reduced but not eliminated shall have his/her contract placed in suspension and will have recall rights to that program or unit for three (3) years. A right to recall means that the retrenched bargaining unit member has first rights to a position for which he/she is deemed qualified.
- H. During the three (3) year period, the faculty member's advancement in the salary system shall cease. Upon recall, the faculty member will enter the salary system at the level held at the time of retrenchment, unless additional degrees, credit hours, and/or related professional experience were earned during the period of retrenchment place the faculty member at a higher salary level as determined by the Provost and the SEA.
- I. A faculty member whose academic unit has been eliminated shall have his/her contract placed in suspension and will have recall rights to the program or unit should it be reinstated within a three (3) year period.
- J. The University shall cease payment of all the faculty member's benefits upon retrenchment. The faculty member may continue all benefits provided by the University at the time of retrenchment as provided for in COBRA.
- K. Determination of affected bargaining unit members shall be based on seniority as defined in this Article, with the most senior person in an affected academic unit of instruction or program to be laid off last. Recall shall be in inverse order of seniority: the last person laid off shall be the first person recalled.

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Section 6. Notification of Layoff.

- A. For purposes of this Article, notice to the bargaining unit member of reassignment, layoff or permanent separation improvement, non-renewal, or termination, is defined as:
 - 1. A personally-delivered document, and/or
 - 2. By certified U.S. mail to the faculty member's last address provided by the member for payroll purposes.
- B. The University's obligation to serve notice is met if the date of personal delivery or the postmarked date of mailing is on or before the date of notification stated in this Article.
- C. The layoff shall commence on the date set forth in the notice.
- D. In the case of a bargaining unit member's layoff status, the Provost will stipulate that his/her contract suspension was due to program retrenchment.
- E. In the case of layoff or elimination of the position of a bargaining unit member the University shall provide the bargaining unit member with a letter upon request explaining the conditions of retrenchment and the University will not dispute payment of unemployment benefits.

Section 7. Seniority.

- A. Seniority shall be defined as the length of continuous employment as a full-time bargaining unit member with the University or its predecessors. Time spent on an approved leave of absence with no break in service shall be considered continuous service.
- B. The following situations shall constitute a break in continuous service for which seniority is lost:
 - 1. Discharge for just cause. However, if reinstated, seniority shall be considered continuous.
 - 2. Retirement
 - 3. Resignation
 - 4. Non-renewal of contract. However, if reinstated the following academic year, seniority shall be considered to have been continuous.
 - 5. Retrenchment. However, if recalled within one academic year, seniority shall be considered to have been continuous.
 - 6. Failure to return to work within thirty (30) calendar days of receipt of recall from

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layoff.

7. A resignation where the faculty member is re-employed or reinstated after thirty-one (31) days or more.
- C. Seniority shall not accrue during the time spent out of the bargaining unit as an administrator, but previously accumulated seniority shall not be lost. A bargaining unit member shall not accrue seniority while on retrenchment, but shall retain seniority earned prior to retrenchment.

Section 8. Seniority Determination.

For retention purposes, if two (2) or more faculty members have the same length of continuous service, seniority shall be determined by the following factors in order:

- A. Tenure/Contract Status: The retention order shall be as follows: Tenured Professors, Tenured Associate Professors, Assistant Professors with Continuing Contract, Tenure Track Assistant Professors, Senior Instructors in Tenure Track positions, Instructors in Tenure Track Positions, FTIs.
- B. Areas of Specialization
- C. Level of Degree
- D. Date and Time of Hiring

ARTICLE 23

ARTICLE 23. SIGNIFICANT DISRUPTIONS TO ACADEMIC OPERATIONS

- A. The University is subject to a myriad of possible extended disruptions to the delivery of educational services due to major disasters, pandemics, and other cataclysmic events. In the interest of students continuing their educational goals, conserving public funds, and continuing the University's mission during and after an emergency, this Article applies.
- B. Subject to directives from state and/or federal authorities to the contrary, the University will continue to pay salary and benefits of faculty so long as the semester or session is determined salvageable, which may require flexibility in order to assist with the successful completion of the semester or session including scheduling, changes in the academic calendar, teaching and other duties on weekends or on scheduled breaks (e.g. spring break) within the semester or session without additional compensation. Faculty members will work with administration to assure that timely communication to students occurs.
- C. If a semester or session cannot be salvaged the University will maintain pay and benefits in order to ensure continuity of the institution and to assure the University can be reconstituted once the emergency subsides. Faculty members accepting salary and benefits while the semester or session is cancelled are required to perform reasonable services that may not be consistent with normal responsibilities or work schedules. Individuals who elect not to perform reasonable services may have their pay and benefits terminated. Individuals who fail to return upon the University's request to help in the resumption of normal University activities shall be required to refund the University or elect to remit payment through automatic deductions from his/her paycheck an amount equal to pay and benefits received during the emergency.
- D. If more than one semester (excluding summer) in sequence is cancelled the parties agree to meet and negotiate continuance of pay and benefits and duties associated therewith.
- E. This Article does not apply to events and resulting workforce actions addressed in Article 22, Retrenchment.

ARTICLE 24

ARTICLE 24. NO STRIKE/NO LOCKOUT/NO REPRISALS

Section 1. No Strike.

The Association and its officials shall not authorize or engage in a strike, slow-down, or any other form of a work stoppage during the term of this Agreement.

Section 2. No Lockout.

During the term of this Agreement, the University administration shall not lock out or otherwise prevent employees from performing their regularly scheduled duties, unless such employees have been placed on administrative leave or suspended as addressed in Article 18.

Section 3. No Third Party Picketing.

The Association will not honor a picket line of any other labor organization affecting the operation of the University.

Section 4. Agreement.

After ratification of this Agreement, both parties agree to abide by this Article.

Section 5. Violations.

Either party may utilize the remedies provided in O.R.C. Chapter 4117 or procedures outlined in Article 19 for violations of this Article.

Section 6. No Reprisals.

The Association and the University agree that there will be no reprisals by either party to this agreement or any agents of either party for actions taken or not taken during the collective bargaining process for this agreement.

ARTICLE 25

ARTICLE 25. TERMS OF AGREEMENT

This Agreement shall become effective on August 24, 2015 and remain in full force and effect until midnight on the last day before the start of the Academic Year 2018-2019 (as reflected on the approved AY calendar).

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective authorized representatives.

Shawnee Education Association

by Clifford S. Poirot
Clifford S Poirot, PhD
Association President

Shawnee State University

by Rick S. Kurtz
Rick Kurtz, PhD
University President

by Klara Reynolds
Klara Reynolds, Chairperson
Shawnee State University
Board of Trustees

APPENDIX A

APPENDIX A

PROMOTION AND TENURE GUIDELINES, CRITERIA AND SOURCES OF EVIDENCE

Section 1. General.

Faculty members submitting an application for promotion on the first day of fall semester 2015 will be evaluated under the criteria in place at the last day of spring semester 2015, unless they specify on the promotion form that they wish to be evaluated using the criteria in this agreement. Subject to Article 11, Section 4, the following criteria, upon adoption, shall become effective AY16-17.

Section 2. Excellence in Teaching.

A. Guidelines for Evaluating Excellence in Teaching

1. Candidates must provide documentation for all five criteria for excellence in teaching.
2. Sources of evidence for each criterion are divided into two lists. Candidates must include all sources of evidence on list A. Sources of evidence on list B are not required but can strengthen an application.

B. Criteria for Excellence in Teaching:

1. Criterion 1: Currency in Field. Teaching reflects currency of subject matter. The following sources of evidence can be used to demonstrate currency:
 - a. List A (all are required)
 - i. Dean's, chairperson's, and/or departmental colleague's observations of teaching, colloquia or other public presentations.
 - ii. Syllabi of courses taught.
 - iii. Student opinions about course content and presentation style as determined by teaching evaluations and/or letters of student support.
 - iv. Candidate generated narrative of teaching philosophy, plans, techniques, effectiveness, etc.
 - b. List B (optional)
 - i. Peer review of course content, assessment devices, curricular materials, pedagogical techniques, etc.

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- ii. Scholarly writings or presentations (not otherwise utilized in promotion materials) on teaching and education, the role of the University, etc.
 - iii. Participation in university, community, and/or professional activities concerning teaching and education.
 - iv. Development of improved instructional materials.
 - v. Consulting, or part-time work (no more than 20 hours per week on average) within one's discipline.
 - vi. Completion of continuing professional education courses.
 - vii. Completion, or satisfactory progress towards completion, of a doctoral degree or a second masters.
 - viii. Attainment of or optional certification within one's discipline (e.g., Certified Management Accountant) or related to teaching (e.g., Sloan Certification or Quality Matters).
 - ix. Other documentation showing efforts to remain current in one's field.
2. Criterion 2: Effective Communication: Information is communicated to students in an effective manner. The following sources of evidence can be used to demonstrate effective communication:
- a. List A (all are required)
 - i. Dean's, chairperson's, and/or departmental colleague's observations of teaching.
 - ii. Student opinions about course content and presentation style as determined by teaching evaluations and/or documentation of student support.
 - iii. Syllabi of courses taught.
 - iv. Candidate generated narrative of teaching philosophy, plans, techniques, effectiveness, etc.
 - b. List B (optional)
 - i. Examples of communicating subject matter by different means or methods such as lecture, discussion, lab exercise, demonstration, and practical experience.
 - ii. Mentoring of students in undergraduate research / scholarly projects and

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- creative works.
- iii. Recognition for program/teaching activities by reputable internal or external bodies (e.g.: SSU Distinguished Teaching Award, accrediting organizations, etc.).
 - iv. Mentoring students in non-course related activities or projects designed to promote student professional growth.
 - v. Other documentation demonstrating effective communication in teaching.
3. Criterion 3: Fair Evaluation: Evaluation of students is conducted in a fair and unbiased fashion. The following sources of evidence can be used to demonstrate fair evaluation:
- a. List A (all are required)
 - i. Dean's, chairperson's, and/or departmental colleague's observations of teaching, colloquia or other public presentations.
 - ii. Syllabi of courses taught.
 - iii. Student opinions about fairness of evaluation as determined by teaching evaluations. Letters of student support may also be included.
 - iv. Sample assessment tools (e.g. exams, quizzes, assignments, etc.).
 - v. Candidate generated narrative of teaching philosophy, plans, techniques, effectiveness, etc.
 - b. List B (optional)
 - i. Peer review of course content, assessment devices, curricular materials, pedagogical techniques, etc.
 - ii. Other documentation of faculty member's assessment techniques and evaluation of student performance.
4. Criterion 4: Appropriate Course Offerings: The candidate teaches courses needed by the department consistent with the candidate's advertised position and established scheduling procedures. The following sources of evidence can be used to demonstrate appropriate course offerings:
- a. List A (all are required)
 - i. Syllabi of courses taught.

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- ii. Chair and/or Dean's letter(s) or evaluation(s).
- iii. Candidate generated narrative of teaching philosophy, plans, techniques, effectiveness, etc.
- b. List B (optional)
 - i. Unique contributions to the educational aims of the department in relation to program needs (not otherwise utilized in service or scholarship section).
 - ii. Interacting with or serving as liaison with other institutions of higher education or K–12 institutions (not otherwise utilized in promotion materials) in the advancement of their field of study or collaboration between institutions.
 - iii. Mentoring undergraduate students in senior projects.
 - iv. Mentoring undergraduate students in small research projects designed solely to teach students laboratory skills and processes.
 - v. Other sources of evidence showing that the faculty member has taught the courses he/she was asked to or expected to teach by the department.
- 5. Criterion 5: Academic Rigor: The candidate teaches at a level of academic rigor appropriate to the level of the course. The following sources of evidence can be used to demonstrate academic rigor:
 - a. List A (all are required)
 - i. Dean's, chairperson's, and/or departmental colleague's observations of teaching, colloquia or other public presentations.
 - ii. Syllabi of courses taught.
 - iii. Student opinions about course content and presentation style as determined by teaching evaluations. Letters of student support may also be included.
 - iv. Sample assignments.
 - v. Candidate generated narrative of teaching philosophy, plans, techniques, effectiveness, etc.
 - b. List B (optional)
 - i. Peer review of course content, assessment devices, curricular materials, pedagogical techniques, etc.

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- ii. University or outside recognition for teaching activities (e.g.: college teaching award, distinguished teaching award, etc.).
- iii. Recognition for program/teaching activities (not otherwise utilized in promotion materials) by internal or external bodies (e.g.: accrediting organizations, Princeton Review, etc.).
- iv. Structuring courses to be compliant with specialized accreditation requirements (e.g., IACBE).
- v. Course development, course redesign, teaching projects, course reports and/or notebooks/course books.
- vi. Course changes or improvements reflect mean score of course standardized test meets or exceeds national benchmarks.
- vii. Teaching exemplars that demonstrate course objectives are appropriate for the course level.
- viii. Other sources of evidence showing level of academic rigor in courses taught.

Section 3. Scholarship.

A. Guidelines for Evaluating Scholarship

- 1. Recognizing that Shawnee State University is primarily a teaching institution, no faculty member shall be required to publish in order to achieve promotion or tenure, although publication may be used as a source of evidence to meet appropriate criteria.
- 2. Candidates applying for promotion and/or tenure under substantial contributions in scholarship must provide documentation for criteria 1 and 2. Candidates applying for promotion and/or tenure under outstanding contributions in scholarship must provide documentation for all four criteria.

B. Criteria for Scholarship

Sources of evidence for each criterion are divided into two lists. The candidate must include at least one (1) source of evidence from list A or at least three (3) sources of evidence from list B.

- 1. Criterion 1: Productivity. Scholarship has produced scholarly artifacts during the review period. The following sources of evidence can be used to demonstrate productivity:
 - a. List A - any one of the following may be used as evidence for this criterion:
 - i. Author of books, book chapters, articles, or treatises in peer-reviewed

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- scholarly professional publications or accepted for publication.
- ii. Producing creative works or collaborations or invited public readings.
 - iii. Author of textbooks or textbook chapter or having the same accepted for publication.
- b. List B (if no sources of evidence from list A are present, candidate must have at least three sources of evidence from this list)
- i. Conducting research or scholarly activities, which may involve undergraduate students, in projects designed to contribute knowledge to the discipline, and results in publications or presentations in non-peer reviewed journals or journals devoted to undergraduate research, or at conferences, including those within the university such as Celebration of Scholarship. If student(s) are directed by faculty members, it is not necessary for the advisor's name to be included on the paper/poster/talk-abstract for this to be considered a source of evidence.
 - ii. Submitting proposals for grants, contracts or similar financial support for research or scholarly activities, which may involve undergraduates, from government, foundations, or other sources including internal university grants programs other than those included as service.
 - iii. Giving scholarly presentations or mentoring students who give scholarly presentations, including talks, panels, and posters, to academic or professional organizations or to the university community.
 - iv. Holding offices, positions, or serving as a referee in professional academic organizations or on scholarly editorial boards.
 - v. Statements from faculty, department chairpersons, or members of a research team attesting to the candidate's scholarly contributions and activities.
 - vi. Awards, honors and other recognition of contributions resulting from the candidate's research or scholarship.
 - vii. Achieving or maintaining professional certification/ licensure in an advanced degree or degree in an additional field beyond what is required by the University to maintain employment.
 - viii. Integration of evidence based practice, including continuing education.
 - ix. Documented clinical research.
 - x. Coordinating clinical faculty/preceptor inter-rater reliability.

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- xi. Scholarly work related to P-12 curriculum project which is not used in Service.
 - xii. Author of or major contributor to program self-study if not included in Service.
 - xiii. Development of a workbook, lab manual or ancillary material for classroom and/or lab instruction that is used to support classroom instruction if not included in Teaching.
 - xiv. Author of or major contributor of scholarly research necessary for program accreditation if not included in Service.
 - xv. Statements from Principal Investigators attesting to the candidate's contributions and activities within a research team.
 - xvi. Evidence of confidential commercial scholarly activity, particularly in engineering, which has been verified as scholarly by the department.
 - xvii. Completing or making satisfactory progression towards an advanced degree or certification in the candidate's subject area.
 - xviii. Serving as an exam item writer for licensing or certification exams.
 - xix. Mentoring an individual or group in the process of evidence based change in a clinical practice.
 - xx. Facilitating a journal club for a clinical agency.
 - xxi. Author of book review (published or accepted for publication).
 - xxii. Completion, or satisfactory progress towards completion, of a doctoral degree or a second masters.
 - xxiii. Artifacts not listed above that represent pursuit of creative or scholarly endeavors.
2. Criterion 2: Currency. Scholarly activities have been conducted at Shawnee State University during the period being evaluated.

Such activities may be multiple discrete, short term projects or one on-going project. The following sources of evidence can be used to demonstrate currency:

- a. List A - any one of the following may be used as evidence for this criterion. The candidate must include a narrative explaining how this item meets this criterion.

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All sources of evidence in List A for criterion 1 if they have occurred during the evaluation period and were at Shawnee State University.

- b. List B (if no sources of evidence from list A are present, candidate must have at least three sources of evidence from this list). The candidate must include a narrative explaining how each item meets this criterion.
 - i. All sources of evidence in list B for criterion 1 if they have occurred during the evaluation period and were at Shawnee State University.
 - ii. Consulting, or part-time work (no more than 20 hours per week on average) within one's discipline.
 - iii. Attendance at workshops, presentations, or other such events (e.g., Sloan distance learning courses not leading to certification; presentations by SSU's Teaching & Learning Center.).
 - iv. Attending scholarly meetings, seminars, workshops, conferences, or other gatherings.
 - v. Other relevant documentation of candidate's currency in scholarship.
3. Criterion 3: Sustained Activity: Scholarly activity has been on-going throughout the evaluation period. Such activities may be multiple discrete, short term projects or one on-going project. The following sources of evidence can be used to demonstrate sustained activity:

The university recognizes that the process leading to the production of scholarly artifacts can be lengthy and variable in its timeframe. It is not expected that artifacts be produced regularly. However, it is expected that there is evidence of research and/or scholarly activity (in all stages of the process) throughout the review period.

- a. List A - any one of the following may be used as evidence for this criterion. The candidate must include a narrative explaining how this item meets this criterion.

All sources of evidence in List A for criterion 1 if they have occurred during the evaluation period and were at Shawnee State University.

- b. List B (if no sources of evidence from list A are present, candidate must have at least three sources of evidence from this list). The candidate must include a narrative explaining how each item meets this criterion.
 - i. All sources of evidence on List B in criterion 1 and 2 as long as they have occurred at varying times throughout the evaluation period.
 - ii. Other relevant documentation of candidate's sustained activity.

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4. Criterion 4: Significance: Scholarly activities are either independently directed or are part of a collaboration where an appropriate level of contribution is made, and are of significant scholarly value as defined by peers within the candidate's discipline. The following sources of evidence can be used to demonstrate significance:

Mentoring Committee, DPSC, and the College Promotion Committee should keep in mind that this criterion requires the candidate to direct the scholarly activity or make a significant contribution. It does not require that all research or scholarly activity be independently performed by the candidate. Research or other scholarly activity involving undergraduate students is permitted.

- a. List A - any one of the following may be used as evidence for this criterion. The candidate must include a narrative explaining how this item meets this criterion.

All sources of evidence on List A for criterion 1 may be used but the candidate must demonstrate that scholarly activities are of value to the discipline.

- b. List B (if no sources of evidence from list A are present, candidate must have at least three sources of evidence from this list). The candidate must include a narrative explaining how each item meets this criterion.
- i. All sources of evidence on List B in criterion 1 and 2 as long as the candidate demonstrates that scholarly activities are of value to the discipline.
 - ii. Statements from faculty, department chairpersons, or members of a research team attesting to the candidate's scholarly contributions and activities.
 - iii. Other relevant documentation of candidate's significant scholarly activity.

Section 4. Service.

A. Guidelines for Evaluating Service

Candidates applying for promotion and/or tenure under substantial contributions in service must meet criteria 1 and 2. Candidates applying for promotion and/or tenure under outstanding contributions in service must meet all four criteria.

B. Criteria for Service

Sources of evidence for each criterion are divided into two lists. Candidates must include all sources of evidence on list A and at least three (3) sources of evidence on list B.

1. Criterion 1: Multiple Levels of Service: There is evidence of work at multiple levels of service (e.g., departmental, college-wide, university-wide, community, professional organizations, SEA, OEA, Ohio Board of Regents, and others). The following sources of evidence can be used to demonstrate multiple levels of service:

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- a. List A (all are required)
 - i. Statements from committee chairpersons regarding the candidate's participation and accomplishments. If candidate for promotion is the committee chairperson, another member of the committee may provide this statement.
 - ii. Candidate generated narrative of service activities including committees, task forces, special assignments, accreditation activities, advising of student organizations, informal service, service as a University representative to other organizations, community service, service as a chairperson of a committee, etc.
 - iii. Candidate generated narrative of personal accomplishments within service assignments (may be included in the same narrative as number 2).
- b. List B (at least three sources of evidence from this list are required). The candidate must include a narrative explaining how each item meets this criterion.
 - i. Minutes or products from committees, task forces, etc.
 - ii. Statements from faculty, department chairpersons, or administrators attesting to the candidate's informal service activities (e.g., mentoring junior faculty, reading/editing colleagues' grants or papers, etc.)
 - iii. Verifiable curricular development products (beyond work that is part of one's regular teaching assignments, e.g.: revision of a major or program, development of a minor, collaboration with other institutions on curricula, etc.)
 - iv. Formally submitted grant proposals or obtaining grants or similar financial support (not included in Scholarship) that assists in fulfilling the mission of the department, college, or university.
 - v. Student feedback about advising effectiveness and style as demonstrated by letters of student support.
 - vi. Assumption of a significant professional administrative position(s) (e.g., juror for exhibition, editor of a journal, elected position within a professional organization, conference chair or organizer, etc.).
 - vii. Verifiable products resulting from candidate's service appointment(s).

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- viii. Development or maintenance of studios, labs or instructional spaces in contexts where they enhance the student learning environment (may be in or outside of faculty's area of study).
 - ix. Management of department, college or university web page; or program's computerized data base (e.g.: blackboard, clinical data base).
 - x. Organizing a student community service project that requires significant commitment.
 - xi. Representing SSU with local communities such as: recruiting events, rural health fair, junior day, career day, local-off campus service club activity.
 - xii. Serves on or is an officer for a professional organization or committee at the national, state, regional or local level.
 - xiii. Interviews students for recruitment or admissions purposes.
 - xiv. Organizes/hosts a conference at the national, state, or local level.
 - xv. Advises students at orientation, career day, or other events.
 - xvi. Receives a notable service award, at the college, university, state or national level.
 - xvii. Organizes a community service project (e.g. Crop Walk, Walk for Cystic Fibrosis, United Way).
 - xviii. Serves as a Program Director, Coordinator, or Chair.
 - xix. Involvement in developing, implementing, or updating the Transfer Assurance Guides or other Ohio Board of Regent's activities.
 - xx. Other relevant documentation of candidate's service activities.
2. Criterion 2: Active Service: There is evidence that the candidate actively participated in the activities of committees or in other service projects. The following sources of evidence can be used to demonstrate active service:
- Lists A and B for this criterion are the same as for criterion 1. The candidate must include a narrative explaining how each item meets this criterion.
3. Criterion 3: Increased Level of Responsibility: Service is sustained and ongoing throughout the review period with evidence of increasing responsibility (or sustained high-level responsibility) throughout the entire review period. The following sources of evidence can be used to demonstrate increased level of responsibility:

APPENDIX A

- a. List A (all are required). The candidate must include a narrative explaining how each item meets this criterion.

All sources of evidence on List A for criterion 1 but the candidate must demonstrate that he/she increased or maintained a high level of involvement during the evaluation period.

- b. List B (at least three sources of evidence from this list are required). The candidate must include a narrative explaining how each item meets this criterion.

- i. All sources of evidence on List B for criterion 1 but the candidate must demonstrate that he/she increased or maintained a high level of involvement during the evaluation period.
- ii. Assumption of a significant leadership position(s) within the department, college, university, or union (e.g.; major coordinator, department chairperson, program director, chairperson of a committee, officer of a governance organization, director of a program or center, SEA officer, negotiating team, etc.).
- iii. Assumption of a significant professional leadership position(s) (e.g., editor of a journal, elected position within a professional organization, conference chair or organizer, national accreditation reviewer, program review for professional organizations, etc.).
- iv. Ambassadorial outreach (e.g., supporting fund raising efforts for the American Red Cross; mentoring high school students in state competitions, etc.) to the geographic or professional community in which SSU is directly or indirectly represented.
- v. Preparation, authorship of reports and documents, and actively participating in program specific or university-wide regional accreditation initiatives and/or visits. This includes attending accreditation symposia, cataloging artifacts, compiling and interpreting data, and liaising with the program review team and/or accreditation commission.
- vi. Program Coordinator which includes responsibilities to courses/course sequences such as orientation of adjuncts to course expectations, labs, electronic documentation, etc.
- vii. Other relevant documentation of candidate's increasing responsibility.

4. Criterion 4: Personal Responsibility, Leadership, and Attention: There is evidence that a significant portion of service is at the level requiring elevated personal responsibility and attention. This does not necessarily involve chairing a committee, but a significant

APPENDIX A

workload is expected. The following sources of evidence can be used to demonstrate personal responsibility, leadership, and attention:

- a. List A (all are required). The candidate must include a narrative explaining how each item meets this criterion.

All sources of evidence on List A for criterion 1 but the candidate must demonstrate that his/her role involved substantially more responsibility than that of other committee members.

- b. List B (at least three sources of evidence from this list are required). The candidate must include a narrative explaining how each item meets this criterion.
 - i. All sources of evidence on List B for criterion 1 and 3 but the candidate must demonstrate that his/her role involved a higher level responsibility than that of other committee members.
 - ii. Assumption of a significant leadership position(s) within the department, college, university, or union (e.g., major coordinator, department chairperson, program director, chairperson of a committee, officer of a governance organization, director of a program or center, SEA officer, negotiating team, advisory board member, etc.).
 - iii. Assumption of a significant professional administrative position(s) (e.g., editor of a journal, elected position within a professional organization, conference chair or organizer, national accreditation reviewer, program review for professional organizations, etc.).
 - iv. Statements from faculty, department chairpersons, or administrators attesting to the candidate's high-level service activities.
 - v. Candidate reports of personal accomplishments within high-level service assignments.
 - vi. Verifiable products resulting from the candidate's high-level service appointment(s).
 - vii. Program Coordinator with responsibilities to courses/course sequences such as orientation of adjuncts to course expectations, labs, electronic documentation, etc.
 - viii. Other relevant documentation of candidate's personal responsibility, leadership, and attention.

APPENDIX B**APPENDIX B
FACULTY FIELD SUPERVISION WORKLOAD**

Department of Teacher Education

<i>Course</i>	<i>Workload Hours</i>	<i>Number of Observations/Evaluations</i>	<i>Student Field hours required</i>
<i>Introduction course</i>			
EDUC 1115	0.1 workload hour for the course	Faculty observe/evaluate each student in the clinical setting at least 1 time	18 hours
<i>Programmatic Foundations and Practicum - EC</i>			
EDEC 2285	0.25 workload hour for the course	Faculty observe/evaluate each student in the clinical setting at least 2 times	51 hours
<i>Programmatic Foundations and Practicum</i>			
EDAE 3285 EDIS 3285 EDMC 3285 EDVA 3285	0.25 workload hour for the course	Faculty observe/evaluate each student in the clinical setting at least 2 times	51 hours
<i>Action Research - 3385</i>			
EDAE 3385 EDEC 3385 EDIS 3385 EDMC 3385 EDVA 3385	0.5 workload hour for the course	Faculty observe/evaluate each student in the clinical setting at least 3 times	84 hours
<i>Methods Courses</i>			
EDAE 4433 EDEC 4415 EDEC 4416 EDEC 4420 EDEC 4421 EDMC 4472 EDMC 4473 EDMC 4475 EDMC 4476 ARTP 4801 ARTP 4802 ENGL 4434 MATH 4700 SOC 4435	0.1 workload hour for each student under supervision for field work	Faculty observe/evaluate each student in the clinical setting at least 5 times	126 hours
<i>Methods Courses 8-week courses</i>			
EDIS 4485 EDIS 4585	0.05 workload hour for each student under supervision for field work	Faculty observe/evaluate each student in the clinical setting at least 2 times	90 hours

APPENDIX B

<i>Educational Studies</i>			
EDES 4490	0.1 * course cr hrs * # students under supervision for field work	Faculty observe/evaluation each student in the clinical setting at least 3 times	81 hours
<i>Student Teaching</i>			
EDAE 4490 EDEC 4490 EDMC 4490 EDVA 4490	1 workload hour for each student under supervision for field work	Faculty observe/evaluate each student in the clinical setting at least 7 times	450 hours
<i>Student Teaching - Associate Degree and 8-week courses</i>			
EDEC 2290 EDIS 4490 EDIS 4590	0.5 workload hour for each student under supervision for field work	Faculty observe/evaluate each student in the clinical setting at least 3 times	240 hours
<i>M.Ed. Internship - Licensure seeking</i>			
EDIS 6585	1.0 workload hour for each student under supervision for field work	Faculty observe/evaluate each student in the clinical setting at least 7 times	450 hours
<i>M.Ed. Internship - NON-Licensure seeking</i>			
EDIS 6585	0.5 workload hour for each student under supervision for field work	Faculty observe/evaluate each student in the clinical setting at least 3 times	225 hours

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From: Clifford Poirot
Sent: Tue 9/6/2016 8:37 PM
To: Nicholas Meriwether; Robert Mendris; Theresa Jackson; Michael Barnhart
Cc: Daniel Johnson(2); SEA
Subject: RE: Transgender issues in the classroom / remedial course

These are good questions and I will get back to you with a formal response.

A quick note: the case you are referring to was originally reviewed by a Federal Judge in the Fourth Circuit. That judge, as you note, over ruled the lower court. The issue was accommodation for transgender students in the restrooms.

However, the next level court over ruled the lower court. So at present, the need for accommodations of transgender students has been upheld by a Federal Court.

However...the Supreme Court the issued a stay, 5-3 and this case will be reviewed at some time in the near future by the Supreme Court.

People who try to read the tea leaves in the Supreme Court believe it is tied at 4-4, but that Breyer, as a courtesy, agreed to hear it and to issue the stay. There is some thinking that Breyer's agreeing to a stay was related to capital punishment cases.

Anyway, we have had some discussion on Title IX and related issues with OEA contract attorneys going back a couple of years. We can pull these together and if necessary, see if we can get some more concrete feedback on this issue. In addition, we can also explain how the OEA legal review process works.

I will try to get some kind of formal, preliminary response in the time frame of a week.

-----Original Message-----

From: Nicholas Meriwether
Sent: Tue 9/6/2016 7:57 PM
To: Clifford Poirot; Robert Mendris; Theresa Jackson; Michael Barnhart
Cc: Daniel Johnson(2); SEA
Subject: RE: Transgender issues in the classroom / remedial course

To the SEA Executive Committee:

Here is what I would like to know from the SEA leadership. Whether they're addressed in a general meeting or special forum does not matter to me, but as dues-paying union members, I believe we deserve well-researched and -informed answers to these questions, as these issues directly affect our livelihood.

- 1) What, specifically, can happen to an instructor if a student successfully complains about his or her speech regarding non-curricular matters? Can we be fired? Can our pay be docked or suspended? Could the University be fined or sued, and would we be a co-defendant to the lawsuit? I'd like to see this set out clearly and in detail.
- 2) Has the leadership contacted the NEA to ask about protections for faculty who run afoul of this or other policies regarding non-curricular faculty speech?
- 3) What protections does the NEA offer for faculty that in good conscience cannot abide by a DOE directive?
- 4) The link I provided indicated that there has been a recent successful legal challenge to this [transgender recognition] policy. Is it then non-applicable for the time being? For how long?
- 5) Is there precedent for this, i.e., the DOE issues a directive for non-curricular faculty speech in a university classroom, and faculty are advised to submit without any resistance from the union? What were these incidents?

Regards,

-- Nick

-----Original Message-----

From: Clifford Poirot

Sent: Mon 9/5/2016 2:23 PM

To: Robert Mendris; Theresa Jackson; Michael Barnhart

Cc: Nicholas Meriwether; Daniel Johnson(2); SEA

Subject: RE: Transgender issues in the classroom / remedial course

Folks,

I don't want to inhibit discussion and I have no actual power to control what is and is not said on the SEA list.

However, at this point I would respectfully request the following:

1. If there is a need for further discussion on University Policies and Procedures with respect EEOC/Title IX issues that the communication be sent to either me personally, or to the Executive Committee of the SEA, indicating what step(s) you are requesting the Association take to address these issues;

2. If people want to get into a debate on the Constitutionality of city ordinances prohibiting discrimination, please use a different forum.

I prefer, in so far as possible, to use the SEA list for informing SEA members of issues directly pertaining to the SEA rather than as a general list serve for discussion.

Thanks.

-----Original Message-----

From: Robert Mendris

Sent: Mon 9/5/2016 12:47 PM

To: Theresa Jackson; Michael Barnhart

Cc: Nicholas Meriwether; Clifford Poirot; Daniel Johnson(2); SEA

Subject: RE: Transgender issues in the classroom / remedial course

Theresa,

> I have more experience than all of you combined.

I wouldn't be so sure.

Here is a proposal of a city ordinance about that issue.

http://www.dispatch.com/content/downloads/2016/08/Draft_Nondiscrimination_Ord_Chillicotthe.pdf

Test your knowledge about the Constitution:

What Constitutional violations on page 15 can you find?

I found over 100 obvious violations in the whole 16 page ordinance. All well-known that need only basic understanding of the Constitution that should be given at schools.

At the public meeting, a couple of hundreds of very concerned people came.

They all felt that there is something terribly wrong but nobody else pointed out one single specific Constitutional violation.

What are they taught at schools?

We should start to require "Constitution 99" remedial course.

Robert

-----Original Message-----

From: Theresa Jackson

Sent: Thu 09/01/2016 23:22

To: Michael Barnhart

Cc: Nicholas Meriwether; Clifford Poirot; Daniel Johnson(2); SEA

Subject: Re: Transgender issues in the classroom

Hello Michael,

I have read this discussion with interest.

You asked if anyone had expertise in this area. I think it would be fair for me to say I have more experience than all of you combined.

I suggest anyone interested in this subject to read a Capstone essay written by Tyler Guarneri titled Love and Hate in Appalachia; Freedom of Speech For Gay and Anti Gay Students in Boyd County Kentucky.

I was a member of the Board of Education that Tyler writes about. Like many of you, we had little knowledge about this subject.

During that time, none of us on the BOE had the educational backgrounds that you possess. We made mistakes, and learned from them.

I admit I briefly skimmed Tyler's essay but it appears to highlight what happened as we struggled to do what was right.

Theresa

Sent from my iPhone

On Sep 1, 2016, at 5:27 PM, Michael Barnhart <mbarnhart@shawnee.edu> wrote:

Hi All,

I just wanted to thank Chip for attempting to keep his colleagues out of legal/disciplinary trouble, and to second Nick's call for an agenda item to open discussion at one of our University Faculty Senate meetings.

Are there members of our campus community with expertise in these matters, or other resources that might inform our discussion?

It would also be a good topic for our Executive Committee to raise at the Ohio Faculty Council in Columbus so that we can get a sense of the similar conversations that other campuses in

Ohio are having and their policies and strategies.

Sincerely,

Mike Barnhart

On Sep 1, 2016, at 4:30 PM, Nicholas Meriwether <nmeriwether@shawnee.edu> wrote:

Colleagues,

I'm more than a little troubled that we are being advised to swallow our convictions, whatever they may be, and abide by a highly controversial "Dear Colleague" letter from the DOE. Honestly, I've never seen anything like this in my 21 years in higher ed. As I read Chip's advice, if a student demands of me that I use a certain pronoun, and I balk or show some form of hesitation, I am subject to a lawsuit? If things are truly this serious, I would suggest we need both the SEA and the UFS to sit down with the administration and look carefully at what degree of protection faculty have regarding academic freedom and workplace harassment. (I'm not satisfied with Chip's distinction between, e.g., lecture material and what students may demand of me in my classes.)

I take some comfort in the fact that Chip may be exaggerating the immediate danger. There is already a successful legal challenge to what can only be considered a rogue, highly-politicized and academically-damaging action by the DOE. I am providing the link, and also the final paragraph of the article below:

<https://www.insidehighered.com/news/2016/08/23/courts-decision-us-transgender-policy-could-threaten-other-title-ix-rules>

Here's the final paragraph:

"But [Kent Talbert] said the transgender policy case represents the 'first time that you've had a Dear Colleague guidance letter [which is what Chip is referring to] come before a court, and the judiciary is saying here's our view of the law, and the department's wrong and the challengers are correct.' It is unlikely to be the last, he said."

I am on the Faculty Senate, and am considering bringing this issue up at our first meeting. If you support my concerns, please let me know either publicly or privately.

-- Nick Meriwether

-----Original Message-----

From: Clifford Poirot

Sent: Thu 9/1/2016 1:03 PM

To: Daniel Johnson(2)

Cc: SEA

Subject: RE: Transgender issues in the classroom

Dan,

A short, contractually based answer here and I am willing to discuss this farther, though I'd suggest a different setting would be more conducive to a general exchange on academic freedom and the Department of Education.

My primary objective in this specific instance is simply to provide contractual based advice (not legal advice) on how to keep oneself out of the University's internal disciplinary process.

I am providing this advice based on my experience, my multiple conversations with OEA contract attorneys on Title IX issues, and after discussion of this specific issue with our LRC and our joint review of this DoD memo which was forwarded to us from OEA legal.

My advice does not constitute a legal opinion.

It is my view that our CBA protects speech in the classroom that is related to the curriculum. This includes the presentaton or discussion of views that contradict my own mostly "left of center" values and political beliefs. So yes, in the context of a classroom discussion on transgender issues or gay rights, or many other issues, a professor's speech that is on topic would be protected by the contractual definition of academic freedom. Certainly, in the context of a discussion within the Union about the SEA President's advice, people criticizing, expressing disagreement or just dislike of the facts of the matter is certainly protected speech. Our CBA also

protects academic freedom in department meetings, Faculty Senate, committees, etc. as well as your research.

That said, please bear in mind that this issue could become concrete in one of two, or both of the following ways:

1. A bargaining unit member is accused of harassment based on protected characteristics in the University's internal process;
2. A student sues you, and/or the University.

It is my studied, but I emphasize non-lawyer's opinion that the Union would stand a good chance of prevailing in an arbitration in a case where a Professor is charged with harassment based on classroom speech that is about the curriculum.

It is my studied, but non-lawyer's opinion, that we would stand a very poor chance of prevailing in a case where a Professor refused to use a requested name or pronoun.

As current SEA President, I am comfortable and committed to defending the academic freedom of my colleagues whose views I agree with, and I am comfortable and committed to defending the academic freedom of my colleagues whose views I disagree with, and which I might even personally view as wrong and offensive.

I hope I do not have to be put in the position of having to defend a bargaining unit member against a charge when the circumstances of that behavior are known by bargaining unit members to put them in jeopardy.

As to your personal speech outside the classroom, as a general rule I would say your speech is protected, though there are instances in which you might lose that protection while on campus.

In terms of what you say outside the context of your employment as a University Professor, I do not think that the DoE has anything to say at all.

All that said, there are cases winding their way through the courts now addressing these issues. This all gets so very complicated so very fast and in reality, you would need a lawyer to review specific facts of specific matters if it were to ever actually go to Court.

In this particular instance, I believe the DoE's interpretation of case law is correct, but again, that's not a legal opinion.

In general however, I believe that the DoE has been way outside its authority on other issues-which I said in a previous e-mail.

From: danielmullenjohnson@gmail.com [<mailto:danielmullenjohnson@gmail.com>]
On Behalf Of Daniel Johnson
Sent: Thursday, September 01, 2016 12:39 PM
To: Clifford Poirot
Cc: SEA
Subject: Re: Transgender issues in the classroom

Hi Chip,

I don't have any problems personally following this advice, and frankly I can't imagine the issue of gendered pronouns really coming up all that much. It wouldn't come up when I was talking to the student, because then I would be using "you," It would only come up talking about the student to someone else, presumably in the presence of the student, which I

don't do much of, and it would be easy just to use the student's name instead of a pronoun. I assume the DoE can't regulate our speech that isn't in the presence of the student -- they can't regulate my use of pronouns when I'm off campus, right? Or even when I'm having a philosophical discussion about sex and gender on campus? That is a troubling restriction on free speech.

That leads me to what I wanted to ask: doesn't this raise some issues of academic freedom? Transgender issues are heated topics of debate in a number of different academic disciplines across the university; and I presume the proper uses of pronouns and the like are one of those debates. (I'm not personally up on any of these debates, I confess.) In the past, you have generally been a strong advocate of academic freedom, and I have generally cheered you on. Do you think the Department of Education has overstepped its bounds in this case, specifically with respect to universities, and is it threatening to encroach on the academic freedom of college professors? If not, why not? I'm curious what you think.

Best,

Dan

On Tue, Aug 30, 2016 at 9:36 AM, Clifford Poirot <cpoirot@shawnee.edu> wrote:

Good morning everyone,

I'm writing to provide important advice to all bargaining unit members.

As the issue of transgender identity becomes more visible in society, we are likely to find ourselves having to respond to transgender issues in some fashion. As your President, it is my advice to you that you make every effort to accommodate a student's requests regarding use of gender pronouns, names and insure that students who identify as transgender do not confront a discriminatory environment.

Very recently, the U.S. Department of Education sent a "Dear Colleague" letter regarding this matter. As you probably all know, Title IX of the Higher Education Act requires educational institutions that receive federal funds to insure that students are not discriminated against on the basis of gender. This creates an additional layer of enforcement of the 1964 Civil Rights Act provisions regarding gender discrimination. Periodically, the Department of Education issues these letters to educational institutions to inform them of how the U.S.

Department of Education is interpreting the law. While these letters are not binding per se, they provide guidance to institutions.

I have provided a link to this latest letter and excerpted some relevant portions below.

I have also requested that the University create an actual process for transgender students to inform the University. In the interim, I would strongly recommend to everyone that when a student requests recognition of their gender identity that you accommodate that student, even if that information differs from what is on your official class role.

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>

"The Departments interpret Title IX to require that when a student or the student's parent or guardian, as appropriate, notifies the school administration that the student will assert a gender identity that differs from previous representations or records, the school will begin treating the student consistent with the student's gender identity."

"2. Identification Documents, Names, and Pronouns Under Title IX, a school must treat students consistent with their gender identity even if their education records or identification documents indicate a different sex. The Departments have resolved Title IX investigations with agreements committing that school staff and contractors will use pronouns and names consistent with a transgender student's gender identity."

From: Roberta Milliken
Sent: Mon 11/7/2016 6:18 PM
To: Nicholas Meriwether
Subject: RE: SSU Transgender Policy

Hi, Nick--

As I indicated in our discussion, there is no formal policy specific to transgender students, faculty, or staff at the university. However, the university does have a non-discrimination policy that includes "gender identity." (See policy 5.01 and its reporting procedure 5.01:02.) This is all that I can provide you "in writing" as per your request.

I hope this helps.

Best,
Roberta

Roberta Milliken, Ph.D.
Acting Dean, College of Arts and Sciences Shawnee State University
940 Second Street
Portsmouth, Ohio 45662
740.351.3550

-----Original Message-----
From: Nicholas Meriwether
Sent: Mon 11/7/2016 3:41 PM
To: Roberta Milliken
Subject: SSU Transgender Policy

Dear Roberta,

Per our discussion week before last, I'm checking in to see whether a policy is in preparation for faculty use of language regarding transgender students. If I understood you correctly, you said at the conclusion of our meeting that I could be provided a written policy. If it's not ready now, do you know when one might be ready?

Also, a further question: Is it your understanding that I must address students according to their chosen gender outside of class, say, if I see them in the University Center or the library? Will this be stated explicitly in the policy?

Thanks,

— Nick

P.S. I sent this to you earlier today on my private account. Just want to be sure you see it.

From: Marc Scott
Sent: Wednesday, January 10, 2018 8:48 AM
To: Douglas Shoemaker <dshoemaker@shawnee.edu>
Subject: Potential Title IX Complaint

Hi Doug,

This email is in reference to the voice mail message I left you last night. There may be a Title IX complaint coming forward from a student who has an issue with a faculty member. A department chair spoke with me yesterday afternoon and informed me that a faculty member told her about an incident in his classroom. Here's what the department chair described:

A transgender student (transitioning from male to female) asked the professor to refer to her as a woman and use appropriately gendered pronouns. The professor said he would not do so. The student spoke with the professor after class and repeated the request that the professor use pronouns conforming to her gender identity. The professor refused. The conversation was heated and at one point the student asked, "Well, what if I just decided to call you a cunt?" The professor said that wasn't the same issue. The students said she would be filing a complaint and would speak to Dr. Scott.

I didn't ask for more details or clarification from the Department Chair, and the professor in question and the Department Chair do not know the name of the student. Although the student referred to me by name in the conversation with the professor, I do not know the name of the student, but I have a good guess of who it might be (I briefly worked with her on a student organization she wished to start and she was aware of my election as Faculty Senate President--that may be why she referred to me). The Department Chair did mention that in her conversation with the professor, he emphasized male pronouns when recounting events, "HE said this. And then HE said that," e.g.

If the student approaches me, how would you like me to proceed? Take the information and file it in Maxient or refer the student to you or another deputy? Let me know what you think and/or if you have any questions.

Thanks much,
Marc

Marc Scott, PhD
Associate Professor and University Faculty Senate President
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662
(740) 351-3038

From: Nicholas Meriwether
Sent: Thursday, January 11, 2018 1:32 AM
To: Marcie Simms
Cc: Jennifer Pauley
Subject: Belligerent Student

Dear Marcie,

You might need to be aware that in the course of a conversation with a student after class on Tuesday (PHIL 3360 Political Philosophy, 2-3:5, TR), the student demanded that I use female references to him, and I said that I don't think people should tell me what I can or can't call them, admittedly a weak response (I meant that, e.g., a white man can't demand that I call him a black man). The student then responded, "Then I guess I can call you a cunt." Other students who had stayed after class likely heard him. He also had an aggressive manner, i.e., he was "in my face."

I mention this because I'm concerned that the student may become aggressive today (M108, 2-3:15). I have notified security in case I need to ask him to leave class and he refuses. Unfortunately, I'm not absolutely certain what the student's name is, since it was the first day of class, but I'm pretty sure it is [REDACTED]

I'll be in my office all morning beginning at 9:30 in case you would like to discuss this at x447.

Regards,

-- Nick

Nicholas Meriwether, PhD
Professor of Philosophy



February 13, 2018

Nicholas Meriwether, PhD
Professor, Department of Philosophy
MAS 407
Shawnee State University

BY INTEROFFICE MAIL

Dear Dr. Meriwether,

I have spoken with you several times, mostly recently on January 25 and February 13, regarding the informal complaint of a student in your Political Philosophy class that you did not address her as "Ms. _____" or "Miss _____," as you acknowledge you address other female members of the class, while you address male students as "Mr. _____." The complaint alleged that the student informed you that she identifies as a female. It was alleged that upon being notified of this, you began calling this particular student only by her surname, unlike the way you address other students, i.e., without preceding it with "Mr.," "Miss," or "Ms." and that last Tuesday you referred to the student as "he" in your class. The student has notified the Dean of Students that you have continued to ignore or reject her requests that you treat her the same as other students who identify themselves as female.

Policy No. 5.01REV, promulgated by the Shawnee State University Board of Trustees, has among its purposes the creation of an educational environment that prohibits discrimination on the basis of "race, color, genetic information, religion, age, disability, national origin, ancestry, sex, pregnancy, sexual orientation, gender identity, veteran status or military status." This letter is not a notification that you are being investigated for a policy violation. Rather, it is a formal notice that are expected to comply with Policy No. 5.01REV by treating all students the same, irrespective of their gender identity. Should there be future complaints of disparate treatment in violation of this policy, whether involving the student referred to above or not, the University may conduct an investigation in accordance with University policies and the faculty collective bargaining agreement. If such an investigation substantiates a complaint, you could be subject to informal or formal disciplinary action.

I look forward to your cooperation in this matter.

Regards,

A handwritten signature in blue ink, appearing to read 'Roberta Milliken'.

Roberta Milliken, Ph.D.
Acting Dean, College of Arts and Sciences

From: Roberta Milliken
Sent: Friday, February 16, 2018 8:39 AM
To: Nicholas Meriwether
Cc: Eugene Burns; Malonda Johnson; Douglas Shoemaker
Subject: notification of investigation

Dear Nick,

This is to inform you that after receiving another complaint from a student in your Political Philosophy class, I am initiating a formal investigation as per Article 18 in the Collective Bargaining Agreement. Because the matter involves a potential violation of University Policy 5.01REV that addresses unlawful discrimination and harassment, I am also directing this complaint to the Director of Human Resources, Malonda Johnson, and the Title IX Coordinator, Douglas Shoemaker. This action is due to the allegation that you continue to address this student differently than others within the class by calling her by her surname while other students are addressed as Ms. ____ or Mr. _____. Additionally, the student alleges that a male pronoun was used in reference to her in class on February 15th. I anticipate that you will be contacted by Ms. Johnson and/or Mr. Shoemaker shortly. In the meantime, you have the right to consult with a representative of the SEA and/or OEA, and the right to request the presence of a representative of the SEA or OEA at any meeting with the investigating officer. If you have any questions about the process, please see Article 18 in the CBA.

Regards,

Roberta

Roberta Milliken, Ph.D.
Acting Dean of the College of Arts and Sciences
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662
740.351.3550

From: Roberta Milliken
Sent: Monday, March 12, 2018 8:35 AM
To: Nicholas Meriwether
Subject: RE: Clarifying University Policies

Dear Nick—

I am afraid my answer is the same that it has always been: Every student needs to be treated the same in all of your classes. In other words, the policy seeks to ensure that what is done for one student is done for all to avoid issues of discrimination. This regards names, pronoun usage, and most any other matter.

Best,

Roberta

Roberta Milliken, Ph.D.
Acting Dean of the College of Arts and Sciences
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662
740.351.3550

From: Nicholas Meriwether
Sent: Monday, March 12, 2018 3:59 PM
To: Roberta Milliken <rmilliken@shawnee.edu>
Subject: Re: Clarifying University Policies

Dear Roberta,

Almost two weeks ago, I wrote asking for clarification on how the policy would impact the use of pronouns in class. A little later this week, I will be meeting with the investigator, and I obviously need to understand what the policy means before then. So thank you in advance for responding the question posed in my March 1st e-mail.

Regards,

--Nick

P.S. Please see below for my original inquiry.

From: Nicholas Meriwether
Sent: Thursday, March 1, 2018 1:46 AM
To: Roberta Milliken
Subject: Re: Clarifying University Policies

Dear Roberta,

Thanks for your response. But I need further clarification as to the terms of the policy. You indicate that it would be acceptable for me to call all students by his/her first or last name. However, you do not address the use of pronouns as it relates to students other than the student in question. If I chose to begin calling every student by his/her first or last name as you propose, I would still like to retain the ability to use biologically correct pronouns when referring to all students except the student in question. Would the policy prevent me from using biologically correct pronouns when referencing other students, as long as I addressed the student in question using first or last name and refrained from using pronouns?

Regards,

-- Nick

From: Roberta Milliken
Sent: Monday, February 26, 2018 1:55 AM
To: Nicholas Meriwether
Subject: RE: Clarifying University Policies

Hi, Nick—

The goal of University Policy 5.01REV is ensure that every student is treated the same in our classes to avoid issues of discrimination and/or harassment. Two of the options we have discussed and you have reiterated in your letter would seem to achieve this: calling every student in your classes by his/her last name or by his/her first name. The point is, again, to treat all of your students the same.

Best,
Roberta

Roberta Milliken, Ph.D.
Acting Dean of the College of Arts and Sciences
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662
740.351.3550

From: Nicholas Meriwether
Sent: Friday, February 23, 2018 8:51 AM
To: Roberta Milliken <rmilliken@shawnee.edu>
Cc: meriwether5@mac.com
Subject: Clarifying University Policies

Dear Roberta,

I am sending you this letter in order to get clarification regarding university policies regarding the way I address students. As you can see, I'm having formatting problems with the university email system, so I'm also attaching a hard copy.

Thank you in advance for your time.

Regards,

Nick

Nicholas K. Meriwether, PhD
Professor of Philosophy
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662

Roberta Milliken, PhD
Acting Dean of the College of Arts and Sciences
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662

Re: Clarifying University Policies

Dear Dean Milliken,

I have received your letter of February 13, 2018 and your e-mail of February 16, 2018 regarding the manner in which I address and refer to students in my classes. As I assess how to respond to these complaints and investigations, I wanted to clarify a few points and ensure that I correctly understand the University's policies on this issue.

First, please understand that my remarks to the student who lodged the complaint that sparked your February 16th e-mail were inadvertent. As you know, I am still assessing how to respond to your latest correspondence and the investigations they reference. I may ultimately

conclude that I cannot comply with your directives due to my conscience, ethical or religious convictions, or my views on free speech. But when this student participated in class discussions on February 15th, my comments were the result of deeply-ingrained habit, following the standard conventions of English grammar and usage that until just recently were utterly uncontroversial.

Second, I need to inform you that in addition to other pedagogical, philosophical, and ethical concerns, I am a Christian. As such, it is my sincerely held religious belief, based on the Bible's teachings, that God created human beings as either male or female, that this gender is fixed in each person from the moment of conception, and that it cannot be changed. It is also my sincerely held religious belief that Scripture forbids affirming things that are not true (*e.g.*, Prov. 4:24, I Peter 2:1). Therefore, my religious beliefs and convictions forbid me from referring to a student who is biologically male using feminine titles (*e.g.*, Miss, Ms.) or pronouns and from referring to a student who is biologically female using masculine titles (*e.g.*, Mr.) or pronouns. I continue to hope that we can come to an arrangement that will satisfy your concerns and allow me to live in accordance with my faith and convictions, and I hope this notification helps you understand my perspective.

Third, I previously proposed an arrangement that I had hoped would resolve this matter. Specifically, I had offered to refer to the student whose complaints sparked your letters and this investigation by the legal name of choice (*i.e.*, first or last name) without using any title or pronoun, though I would continue to use biologically-appropriate pronouns for all others when the situation naturally called for it during the Socratic discussions that my classes feature. Of course, I was willing to do the same for any other student who requested it. But when we spoke on January 25th and February 12th, you indicated that this arrangement would violate the University's policy regarding sexual orientation and gender identity discrimination as it does not treat all students identically and that I should consider no longer referring to any student by "Mr." or "Ms." Please confirm that my understanding of University policy is correct.

As I assess my options, I would like to know whether another arrangement would comply with University policy. Let's say I started referring to all students by their last names, without using any titles, while still referring to all other students by their biologically-appropriate pronouns. To me, this approach of not using titles may undermine the atmosphere of mutual respect and seriousness that is befitting a college classroom, as my students and I would then refer to each other the same way as junior high students or teammates on an athletic field. While I remain concerned about this, at this point, I am just trying to ascertain whether this approach would comply with the University policy of treating all students the same. Thank you in advance for letting me know whether it would and, if not, why it would not.

If University policy prohibits me from following this second approach, my understanding is that there is only one way for me to interact with students. That is, I would have to stop referring to students using titles (*i.e.*, just use their first or last names) and stop using pronouns altogether for any student. Please confirm whether my understanding of University policy and its implications for me is correct.

Again, I am writing this letter to explain a few matters and to clarify my options going forward. I look forward to receiving your responses and hope they will provide some clarity as I determine my next steps.

Sincerely,

Nicholas K. Meriwether

From: Jeff Bauer
Sent: Monday, March 12, 2018 11:09 PM
To: Nicholas Meriwether
Cc: Rick Kurtz
Subject: RE: Request to Suspend Disciplinary Investigation

Dear Dr. Meriwether,

I have full confidence that Dean Milliken has given this case a fair assessment prior to initiating an investigation. As employees of Shawnee State, we are obligated to report discrimination claims and, once reported, the University is required to investigate.

Dr. Jeffrey A. Bauer
Provost and Vice President for Academic Affairs
Shawnee State University
Office: 740-351-3641
jbauer@shawnee.edu

From: Nicholas Meriwether
Sent: Monday, March 12, 2018 3:45 PM
To: Rick Kurtz <rkurtz@shawnee.edu>; Jeff Bauer <jbauer@shawnee.edu>
Subject: Request to Suspend Disciplinary Investigation

Dear President Kurtz and Provost Bauer,

Thank you in advance for reviewing the attached letter about a formal investigation Dean Milliken recently opened against me. I am looking forward to hearing from you at your earliest convenience.

Regards,

Nicholas K. Meriwether
Professor of Philosophy

March 12, 2018

Nicholas K. Meriwether, PhD
Professor of Philosophy
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662

President Rick Kurtz
Office of the President
Provost Jeffrey A. Bauer
Office of the Provost
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662

Re: Request to Suspend Disciplinary Investigation

Dear President Kurtz and Provost Bauer,

On February 16, 2018, Dean Milliken announced that she was opening a formal investigation against me under Article 18 of the Collective Bargaining Agreement. According to Gene Burns, you have the authority to overturn any disciplinary actions Dean Milliken might recommend after this investigation. So I am writing to request that you intervene to suspend this investigation before she issues a recommendation. After twenty-one years of exemplary service at Shawnee State, it is profoundly disturbing to be the subject of such an unfounded, unjust investigation. Furthermore, it would be in the best interests of all involved if this investigation were closed out immediately.

As you may not be aware of what led to this formal investigation, here is a brief summary. During the first class in my political philosophy class this semester, I responded to a question from a student, [REDACTED], by saying a simple, "Yes, sir." To all appearances, he is male, making this a natural response. I generally refer to students in class using a title (*e.g.*, "Mr.," "Ms.," "Miss") and their last name to foster an atmosphere of seriousness and mutual respect. Not only is this befitting of a college classroom, but this formality greatly assists the students in learning how to accept our differences in a mutually respectful manner, something that is particularly important when discussing extremely controversial topics, such as many of those addressed in my classes. But after class, this student approached me, informing me that he was transgender and demanding that I refer to him with feminine titles and pronouns, as this was his new gender. When I hesitated, he became belligerent, circling me and getting in my face. At one point, he remarked, "Then I guess this means I can call you a cunt." Before leaving, he indicated that he would see to it that I was fired if I did not accede to his demands.

In the weeks thereafter, I spoke repeatedly with Dean Milliken, trying to defuse this situation. I offered to call this student by his last name, thus avoiding any debate over titles or, if he preferred, by his first name. Dean Milliken rejected this approach unless I started referring to all students by their last names alone. But as I expressed to her, this would mean that we would refer to each other the same way as junior high students or teammates on an athletic field, not as scholars engaged in a serious enterprise. Indeed, in most professional settings where one person has some degree of authority (*e.g.*, courts of law, government hearing) participants do not refer to one another either by their first or last names alone. I also notified her of my religious convictions on the issue, hoping to find a way of defusing the matter while still allowing me to live and teach consistent with my

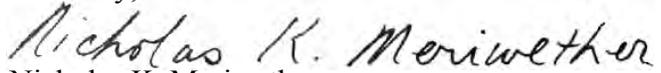
faith, as the enclosed e-mails demonstrate. After this, Dean Milliken indicated that even her proposed approach (*i.e.*, last names only) would violate University policy unless I also agreed to use feminine pronouns for male students and *vice versa* upon request. Indeed, it was my use of masculine pronouns—the standard conventions of English grammar—that sparked this investigation.

Thus, there is no basis for this formal investigation under Article 18, Section 2(C) of the Collective Bargaining Agreement. I have not engaged in any “serious professional misconduct” under Article 7 and have competently and faithfully discharged my professorial duties. Referring to men as “Mr.” and “he” and referring to women as “Ms.” and “she” does not imperil anyone’s health or safety, does not constitute “harassment” or “discrimination” (let alone “severe” harassment or discrimination), and does not impair my ability to fulfil my responsibilities to Shawnee State. This is especially true when I have proposed ways to accommodate students like the one whose complaint sparked this investigation.

At a time when public and state support for higher education is at an all-time low, becoming a lightning rod on such a contentious cultural issue—effectively compelling professors to endorse the transgender movement and policing the use of pronouns on pain of discipline or even dismissal—hardly seems like a prudent course of action for the University. Indeed, if Shawnee State wants to frighten students and parents away from considering it, it will do what Dean Milliken is doing right now: launching a formal investigation against a tenured professor simply because he used the English language in ways that have been utterly uncontroversial since the days of Chaucer.

To be clear, the student whose complaints sparked this investigation has every right to express his views, to try to persuade me to adopt them, and to criticize me if I do not. Indeed, I did not seek to bar him from my class after he used extreme profanity against me, encircled me in a threatening manner, and threatened to have me fired precisely because I thought his views should be represented in a political philosophy course. But on cultural issues like transgenderism, there should be room to differ for students as well as faculty, and the “marketplace of ideas” that universities purport to be is where that room to differ should be most on display. Indeed, the government has no business compelling people to express ideological beliefs they do not hold. I simply seek to exercise this freedom to disagree without having a state institution punish me for doing so. Therefore, I respectfully request that you intervene and suspend Dean Milliken’s investigation immediately.

Sincerely,


Nicholas K. Meriwether
Professor of Philosophy

From: Nicholas Meriwether
Sent: Thursday, March 1, 2018 1:46 AM
To: Roberta Milliken
Subject: Re: Clarifying University Policies

Dear Roberta,

Thanks for your response. But I need further clarification as to the terms of the policy. You indicate that it would be acceptable for me to call all students by his/her first or last name. However, you do not address the use of pronouns as it relates to students other than the student in question. If I chose to begin calling every student by his/her first or last name as you propose, I would still like to retain the ability to use biologically correct pronouns when referring to all students except the student in question. Would the policy prevent me from using biologically correct pronouns when referencing other students, as long as I addressed the student in question using first or last name and refrained from using pronouns?

Regards,

-- Nick

From: Roberta Milliken
Sent: Monday, February 26, 2018 1:55 AM
To: Nicholas Meriwether
Subject: RE: Clarifying University Policies

Hi, Nick—

The goal of University Policy 5.01REV is ensure that every student is treated the same in our classes to avoid issues of discrimination and/or harassment. Two of the options we have discussed and you have reiterated in your letter would seem to achieve this: calling every student in your classes by his/her last name or by his/her first name. The point is, again, to treat all of your students the same.

Best,
Roberta

Roberta Milliken, Ph.D.

Acting Dean of the College of Arts and Sciences
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662
740.351.3550

From: Nicholas Meriwether
Sent: Friday, February 23, 2018 8:51 AM
To: Roberta Milliken <rmilliken@shawnee.edu>
Cc: meriwether5@mac.com
Subject: Clarifying University Policies

Dear Roberta,

I am sending you this letter in order to get clarification regarding university policies regarding the way I address students. As you can see, I'm having formatting problems with the university email system, so I'm also attaching a hard copy.

Thank you in advance for your time.

Regards,

Nick

Nicholas K. Meriwether, PhD
Professor of Philosophy
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662

Roberta Milliken, PhD
Acting Dean of the College of Arts and Sciences
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662

Re: Clarifying University Policies

Dear Dean Milliken,

I have received your letter of February 13, 2018 and your e-mail of February 16, 2018 regarding the manner in which I address and refer to students in my classes. As I assess how to respond to these complaints and investigations, I wanted to clarify a few points and ensure that I correctly understand the University's policies on this issue.

First, please understand that my remarks to the student who lodged the complaint that sparked your February 16th e-mail were inadvertent. As you know, I am still assessing how to respond to your latest correspondence and the investigations they reference. I may ultimately conclude that I cannot comply with your directives due to my conscience, ethical or religious convictions, or my views on free speech. But when this student participated in class discussions on February 15th, my comments were the result of deeply-ingrained habit, following the standard conventions of English grammar and usage that until just recently were utterly uncontroversial.

Second, I need to inform you that in addition to other pedagogical, philosophical, and ethical concerns, I am a Christian. As such, it is my sincerely held religious belief, based on the Bible's teachings, that God created human beings as either male or female, that this gender is fixed in each person from the moment of conception, and that it cannot be changed. It is also my sincerely held religious belief that Scripture forbids affirming things that are not true (*e.g.*, Prov. 4:24, I Peter 2:1). Therefore, my religious beliefs and convictions forbid me from referring to a student who is biologically male using feminine titles (*e.g.*, Miss, Ms.) or pronouns and from referring to a student who is biologically female using masculine titles (*e.g.*, Mr.) or pronouns. I continue to hope that we can come to an arrangement that will satisfy your concerns and allow me to live in accordance with my faith and convictions, and I hope this notification helps you understand my perspective.

Third, I previously proposed an arrangement that I had hoped would resolve this matter. Specifically, I had offered to refer to the student whose complaints sparked your letters and this investigation by the legal name of choice (*i.e.*, first or last name) without using any title or pronoun, though I would continue to use biologically-appropriate pronouns for all others when the situation naturally called for it during the Socratic discussions that my classes feature. Of course, I was willing to do the same for any other student who requested it. But when we spoke on January 25th and February 12th, you indicated that this arrangement would violate the University's policy regarding sexual orientation and gender identity discrimination as it does not treat all students identically and that I should consider no longer referring to any student by "Mr." or "Ms." Please confirm that my understanding of University policy is correct.

As I assess my options, I would like to know whether another arrangement would comply with University policy. Let's say I started referring to all students by their last names, without using any titles, while still referring to all other students by their biologically-appropriate pronouns. To me, this approach of not using titles may undermine the atmosphere of mutual respect and seriousness that is befitting a college classroom, as my students and I would then refer to each other the same way as junior high students or teammates on an athletic field. While I remain concerned about this, at this point, I am just trying to ascertain whether this approach

would comply with the University policy of treating all students the same. Thank you in advance for letting me know whether it would and, if not, why it would not.

If University policy prohibits me from following this second approach, my understanding is that there is only one way for me to interact with students. That is, I would have to stop referring to students using titles (*i.e.*, just use their first or last names) and stop using pronouns altogether for any student. Please confirm whether my understanding of University policy and its implications for me is correct.

Again, I am writing this letter to explain a few matters and to clarify my options going forward. I look forward to receiving your responses and hope they will provide some clarity as I determine my next steps.

Sincerely,

Nicholas K. Meriwether

INVESTIGATION REPORT

TO: Roberta Milliken, Dean, College of Arts and Sciences
FROM: Malonda Johnson, Director, Human Resources
DATE: April 12, 2018 (REV. May 09,2018)
RE: Investigation Results of Nicholas Meriwether

BACKGROUND & SCOPE OF INVESTIGATION

Initial complaint was received on Thursday, January 11, 2018 from Professor Marc Scott to Douglas Shoemaker (Title IX Coordinator). The complaint was assessed by Douglas Shoemaker (Title IX Coordinator) who determined the matter could be addressed through informal resolution. The path of informal resolution was agreed upon by the complainant. Roberta Milliken (Dean, College of Arts & Sciences) met with Professor Meriwether on three separate occasions in an effort to achieve informal resolution. On February 15, 2018 complainant informed Dean Milliken that Professor Meriwether's behavior had not changed. Due to unsatisfactory resolution of the situation, a decision was made to address this matter formally.

The case was assigned to Malonda Jonson (Deputy Title IX Coordinator) for investigation on February 16, 2018. Kara Arms (Human Resources Administrator) assisted with the investigation serving as primary note taker during all interviews. Investigation interviews commenced on February 26, 2018 with the following individuals:

- Witness Interview: (Student A) – February 26, 2018 – 4:00pm
- Witness Interview: (Student B) – February 28, 2018 – 1:30pm
- Complainant Interview: [REDACTED] (Student) – February 28, 2018 – 4:00pm
- Respondent Interview: Nicholas Meriwether (Professor) – March 15, 2018 – 10:00am

To better understand what transpired during the informal resolution process, Dean Milliken was interviewed on March 22nd. A summary of those details are included in Appendix A.

The following section of Shawnee State University's Policy 5.01 (Non-Discrimination/Harassment) and Procedure 5.01:2 (Reporting & Investigating Sexual Assault, Sexual Misconduct & Other Forms of Discrimination) may have been violated by Mr. Meriwether:

- Section 18.6.2.2 Hostile environment toward complainant in an educational context

The complete policy can be found at:

<http://www.shawnee.edu/leadership/policies/media/procedure-501-2.pdf>

SUMMARY OF ALLEGATION(S)

Complainant, [REDACTED], transgender student who legally changed her name through the Registrar's office, alleges Professor Meriwether referred to her as "he" the first day of class. According to [REDACTED], she went up to Meriwether after class to ask that he refer to her using she/her pronouns. [REDACTED] shared that when she first approached Meriwether he said, "I think I know what this is about." He then started debating her and said it was his own opinion. [REDACTED] said she responded by telling him it was disrespectful and asked how he would feel if she referred to him as cunt. According to [REDACTED], Meriwether responded it wasn't the same thing. [REDACTED] shared that she asked Meriwether several times for a yes or no answer (to using female pronouns) and he responded saying he would say "[REDACTED]". [REDACTED] shared that he uses pronouns for everyone else in the class.

[REDACTED] then shared that Meriwether kept referring to her as [REDACTED] and using masculine pronouns (he) after Dean Milliken had spoken with him twice. [REDACTED] shared that Meriwether stopped referring to her altogether or just says "you". [REDACTED] further indicated that there is no commentary from Meriwether when she raises her hand in class, but he provides commentary to everyone else.

SUMMARY OF WITNESSES ACCOUNT

- Below is the response from each witness regarding the treatment of transgender students:
 - **Student A:** On January 12, 2018 witness reported to Marcie Simms (Dean of Students) that he intends to take his Ethics course with another professor because Meriwether knew he was transgender, and refused to refer to him as male or call him by his preferred name. Witness also stated in this communication that Meriwether mentioned "having problems" with transgender students, so to alleviate problems in the class he agreed to Meriwether calling him by his last name.

During the investigation interview witness shared that his birth name was on the roster which is different than the registered name. Witness indicated he approached Meriwether during break because he didn't want there to be confusion when he turned his assignments in with his registered name. According to witness, Meriwether replied, "Oh, you're transgender - I don't recognize that and I won't call you by your preferred pronouns. The most I will do is call you by your last name, exclusively." As a result, witness ended up transferring to a different class.

Witness shared that after making a comment on social media, current and past students commented that Meriwether wouldn't get any better and recommended switching classes. Witness indicated that Meriwether refers to people by how they appear. He also shared that a Title IX event was cancelled out of concern that Meriwether and other students would cause a situation/conflict.

- **Student B:** Witness is in the process of getting a name change, but hasn't told Professor Meriwether about the name change in fear of backlash. Witness has had multiple classes with Meriwether and overheard him announce his biases in front of the class regarding gay rights and marriage and his opinions of LGBT are known.

According to witness, Meriwether uses pronouns to address students and refers to them based on how they appear. Witness also shared that Meriwether picks and chooses students to call out in class (picking favorites).

SUMMARY OF RESPONDENT'S ACCOUNT

Professor Meriwether shared that his interactions with ██████ have been quite good with the exception of the first day. Meriwether explained that after roll on the first day he looked over to Mr. ██████ raising his hand. Meriwether explained that the student appeared to be a male so he responded by saying, "Yes, sir." Meriwether then shared that after class he (referring to ██████) approached him and said, "You need to refer to me as she." Meriwether responded, "I am not sure I can do that." According to Meriwether, ██████ reacted in a threatening manner asking why, and Meriwether responded, "I'm not sure students can demand what they are called." According to Meriwether, ██████ said, "Well, that means I can call you a cunt." According to Meriwether, ██████ insisted that he would get him (Meriwether) fired over this.

Meriwether confirmed that he refers to other students using male or female pronouns when calling upon them in class, but addresses ██████ as "██████" if it comes up. According to Meriwether, it rarely comes up since it is a small class and he can simply point to him when he (██████) raises his hand.

Meriwether shared that on a couple occasions he inadvertently/spontaneously used masculine pronouns after his conversations with Dean Milliken when referring to him (██████). According to Meriwether this was because that was what he was used to.

Meriwether does not believe he has treated ██████ different than other students. He believes that he treats all students exactly the same, i.e., by referring to them by their biological gender, but ██████ insists on being treated differently, i.e., by being referred to by his chosen gender. Meriwether indicated that he cannot accommodate him without violating his sincerely-held beliefs, but he is willing to find another mutually-acceptable accommodation, such as only using his legal name.

Meriwether recalled another transgender student approaching him at the beginning of the semester, but he does not recall the specifics of the interaction or what was said to this student.

FINDINGS

Professor Meriwether has been reluctant to address ██████ using she/her pronouns. When called upon in class, ██████ is referred to as "██████" whereas all other students are addressed using formal Mr. Surname and Ms. Surname. While asked on several occasions to address ██████ in the same manner as other students, Meriwether indicated he would call ██████ by "his" legal name, "██████" or "██████" but continue to use Mr. Surname and Ms. Surname for the others.

Professor Meriwether refuses to use preferred pronouns when addressing transgender students. He views this as a matter of academic freedom and truth that he intends to exercise. Professor Meriwether on several occasions communicated that he does not recognize transgenderism – he

specifically stated that he believes transgender is a lie and mental illness and that Professors should not have to change.

University Policy 5.01 Non-Discrimination/Harassment prohibits discrimination against any individual because of race, color, genetic information, religion, age, disability, national origin, ancestry, sex, pregnancy, sexual orientation, gender identity, veteran status or military status. Applicable Procedure 5.01:2, defines gender identify as a person's innermost concept of self as male or female or both or neither—how individuals perceive themselves and what they call themselves. One's gender identity can be the same or different than the sex assigned at birth.

In this case, the complainant perceives them self as a female which is different than the sex assigned at birth. Professor Meriwether however will only refer to students by their sex assigned at birth. Professor Meriwether refuses to recognize the complainant based on their gender identity (female), and continues to treat the complainant differently than other students when being addressed in class (i.e. being called upon as “█” or “█” while others are called upon using pronouns).

It is concluded that Professor Meriwether's disparate treatment has created a hostile environment for the complainant, which is a violation of Shawnee State University's Policy 5.01 (Non-Discrimination/Harassment).

APPENDICES:

Appendix A: Timeline of Events/Interview -Dean Milliken

Appendix B: Letter Written by Dean Milliken

Appendix C: Note Written by Complainant

Appendix D: Letter Written by Professor Meriwether

APPENDIX A: Timeline of Events During Assessment & Informal Resolution Period

- **1/11/2018:** Professor Marc Scott emailed Title IX Coordinator, Douglas Shoemaker reporting information he received from a Department Chairperson. The Department Chair reported that a Professor shared with them their interaction with a student on 1/10/2018 after the student asked the Professor to refer to them using pronouns for a woman. According to the Professor, the student asked them to refer to the student using pronouns for a woman. The Professor indicated they responded to the student that they would not do so. The Professor stated after class the student approached them and repeated the request for the Professor to use gender pronouns that conformed to her gender identity. The Professor again refused. The Professor said a heated exchange occurred and at one point the student asked “Well, what if I just decided to call you a cunt?”. The Professor stated that it was not the same issue. The Professor said the student then stated she would be filing a complaint and speaking with Dr. Scott. The Chair reporting the incident to Professor Scott indicated that the Professor was using male pronouns when recounting the interaction they had with the student.
- **1/11/2018:** Dean Simms emailed Title IX Coordinator, Douglas Shoemaker reporting she received an email from Professor Nicholas Meriwether describing an interaction he had with a student () on 1/10/2018. His remarks in the email corresponded with the remarks Professor Scott had received from the Department Chair the previous day. In the email he stated he wanted Dean Simms to be aware because he was concerned the student might become “aggressive” in class. Professor Meriwether also stated he had notified security in case “I need to ask him to leave”. He also stated in the email that he had told that “I don’t think people should tell me what I can or can’t call them”. He used male pronouns referring to throughout the email.
- **1/11/2018:** Title IX Coordinator, Douglas Shoemaker met with student . Her account of the interaction with Professor Meriwether corresponded with what had already been reported. further stated she would be comfortable with an informal resolution to the issue and that she just wanted to be called by her preferred pronoun and not be treated differently.
- **1/12/2018:** Title IX Coordinator advised Dean Milliken of the situation and decision to not move forward with an investigation, as both parties were in agreement as to what had transpired between them. It was also communicated to Dean Milliken that was comfortable with an informal resolution. Dean Milliken agreed to discuss the situation with Professor Meriwether and come to an agreement that would make all parties comfortable.
- **1/2018:** Sometime around January 12th (date unknown), Dean Milliken met with Professor Meriwether. Meriwether provided his account of what occurred on January 10th and his disbelief in transgenderism. He explained that he thought it was an illness and a lie, and he didn’t want to be forced to lie because it wouldn’t be true. Milliken explained to Meriwether, that that may be his philosophy, but the student wasn’t feeling comfortable in his class. Meriwether also shared that he liked to use formal Mr. Surname and Ms. Surname in class. Milliken explained that she felt it may not be an issue if he agreed to refer to by her surname.

- **1/22/2018:** Title IX Coordinator followed-up with [REDACTED] by phone and emailed Dean Milliken informing her of the conversation with [REDACTED]. [REDACTED] shared there had been no further confrontations with Professor Meriwether, but she still did not feel an adequate solution had been reached. She stated Professor Meriwether only refers to her as “[REDACTED]” when he calls on her and he continues to refer to other students as “Ms. Smith or Mr. Jones” and uses he/his or her/hers in conversation with them but will only call [REDACTED] “[REDACTED]”. For example, “[REDACTED] was correct in [REDACTED]’s answer and so [REDACTED] doesn’t have to answer the next question.” She stated this is not an acceptable solution and that she still feels she is being treated differently than the other students which is continuing to make her uncomfortable in his class. Title IX Coordinator informed Dean Milliken that he felt an informal discussion with Dr. Meriwether is still the most reasonable way to handle this situation. However, he was concerned that we have been put on notice by this student she is not satisfied with our resolution thus far and that she still feels like the classroom is a hostile environment.
- **1/23/2018:** Dean Milliken advised Title IX Coordinator that she would have a meeting with Professor Meriwether the following day to discuss the unsatisfactory resolution of the situation.
- **1/25/2018:** Dean Milliken had a second meeting with Meriwether to discuss the student being uncomfortable with him continuing to use only her surname and the formal Mr. Surname and Ms. Surname with other students. Milliken explained to Meriwether that the student felt she was being treated differently. Milliken asked Meriwether once again to change how he addressed the student and advised him of the Non-Discrimination policy. Meriwether responded that he didn’t want to and thought it was a matter of academic freedom and truth. According to Milliken, Nick was upset and he stated, again, that transgender is a lie and a mental illness. He stated he felt he was still right, and asked what the university would do if he refused to call the student by the name/pronouns requested. Milliken responded that himself and the University could be vulnerable to legal action. Meriwether indicated he had consulted a lawyer and had legal counsel for himself.

During the meeting Meriwether discussed the “wrongness” of transgender people and linked it to safe spaces and how he was treated when he went to school, indicating that people need to toughen up. He specified that the Professor shouldn’t have to change and the student should accept it. He said it was dignified to call students by their formal name in class and makes them take the class more seriously. Meriwether said it was his preference and he was exercising his academic freedom to do so, and asked Milliken if he should now add a disclaimer to the bottom of his syllabus, or make an announcement to his class that he would now call everyone by their last name but it is not because I believe in or endorse transgender people. Milliken explained that she didn’t think it was a good idea, and it would make the students feel even more singled out. Milliken asked Nick again if he would think about only using last names in class. He said he would have to check with friends, but wasn’t sure if he would. According to Milliken, he said he might be open to calling a student by his/her preferred name if a student seemed frail or distressed. As an example, if a student came to him with a trembling lip, then he might consider it, out of fear the student might potentially harm him/herself. Meriwether then explained that the student in question, is not that (frail), and he thinks “he” (the student) has an agenda.

- **2/2018:** Title IX Coordinator received a call from Tena Pierce, Executive Assistant to Dr. Anne Marie Gillespie, Vice President of EMSA, that student ██████ had been to their office to voice her concerns. ██████ indicated to Pierce that she was scheduled to meet with Dean Simms but wanted to make sure leadership was aware that her complaint had not been resolved and she did not believe anything was being done to address it. She stated she did not wish to speak with Title IX any further and that if something was not done about the discrimination, she would seek a lawyer.
- **2/6/2018:** Title IX Coordinator discussed matter with General Counsel who advised that Dean Milliken would be taking next steps to address this matter.
- **2/7/2018:** Dean Simms and Milliken met with ██████ to let her know the University was addressing the matter.
- **2/12/2018:** Dean Milliken had a third meeting with Professor Meriwether. According to Milliken, before the meeting started, his body language said it all. When she entered, he sat back in his chair and crossed his arms. Meriwether told her that he would send an email with a compromise, explaining that he would call ██████ by "his" legal name, "█████" or "█████". Milliken asked if it would be addressing the other students in the class the same way, and he said no, that he would continue to use Mr. Surname and Ms. Surname for the others. Milliken reminded Meriwether of the Non-Discrimination policy. He replied that he did not think it applied and that he thought this was more an academic freedom issue. He continued by saying that if he capitulated, it would lead to the corruption of the English language and that the student would have won.

Milliken also shared that Meriwether said he believed some campus departments were encouraging the student to complain against him. Milliken asked him which department he thought was doing this, and he said the Diversity Office. Milliken assured him that was not the case. According to Milliken, Meriwether kept talking about not believing in the notion of transgender people, how he believed it to be an illness that caused corruptions and social problems, and that there is no scientific proof it exists. Milliken indicated that with all their meetings, she had to try and bring Meriwether back from talking about his more general philosophies to the fact that there was a student in his class who was feeling singled out, that Meriwether was treating differently. Meriwether indicated that he wished he would have just removed the student from the class at the beginning after they had had the altercation.

2/13/2018: Dean Milliken sent a written communication to Professor Meriwether regarding their meeting on February 12th (*Appendix B*)

2/15/2018 ██████ informed Milliken that Meriwether's behavior had not changed (*Appendix C*).

2/16/2018: Dean Milliken sent Professor Meriwether the formal investigation notice.



February 13, 2018

Nicholas Meriwether, PhD
Professor, Department of Philosophy
MAS 407
Shawnee State University

BY INTEROFFICE MAIL

Dear Dr. Meriwether,

I have spoken with you several times, mostly recently on January 25 and February 13, regarding the informal complaint of a student in your Political Philosophy class that you did not address her as "Ms. _____" or "Miss _____" as you acknowledge you address other female members of the class, while you address male students as "Mr. _____." The complaint alleged that the student informed you that she identifies as a female. It was alleged that upon being notified of this, you began calling this particular student only by her surname, unlike the way you address other students, i.e., without preceding it with "Mr.," "Miss," or "Ms." and that last Tuesday you referred to the student as "he" in your class. The student has notified the Dean of Students that you have continued to ignore or reject her requests that you treat her the same as other students who identify themselves as female.

Policy No. 5.01REV, promulgated by the Shawnee State University Board of Trustees, has among its purposes the creation of an educational environment that prohibits discrimination on the basis of "race, color, genetic information, religion, age, disability, national origin, ancestry, sex, pregnancy, sexual orientation, gender identity, veteran status or military status." This letter is not a notification that you are being investigated for a policy violation. Rather, it is a formal notice that are expected to comply with Policy No. 5.01REV by treating all students the same, irrespective of their gender identity. Should there be future complaints of disparate treatment in violation of this policy, whether involving the student referred to above or not, the University may conduct an investigation in accordance with University policies and the faculty collective bargaining agreement. If such an investigation substantiates a complaint, you could be subject to informal or formal disciplinary action.

I look forward to your cooperation in this matter.

Regards,

A handwritten signature in cursive script, appearing to read 'Roberta Milliken'.

Roberta Milliken, Ph.D.
Acting Dean, College of Arts and Sciences

FEB 15 2018

3:27pm

Hi Roberta!

Dean's Office

This is [REDACTED], we spoke over Title IX issues regarding Meriwether. I don't know if you spoke to him ~~about~~ again about fixing pronouns, but I just wanted to stop by and leave a record of what happened today. We took a quiz in class and immediately went over it. Professor Meriwether asked ~~about~~ about an answer to which I gave. He said in/to the class, "The way he put - uh sorry, the way [REDACTED] put it is correct." which happened at 2:26pm today, February 15th 2018.

Thank you for trying to help get this issue fixed,

- [REDACTED]

to contact me my information is
Student # [REDACTED]
Phone # [REDACTED]
email - [REDACTED]
or [REDACTED]

March 12, 2018

Nicholas K. Meriwether, PhD
Professor of Philosophy
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662

President Rick Kurtz
Office of the President
Provost Jeffrey A. Bauer
Office of the Provost
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662

Re: Request to Suspend Disciplinary Investigation

Dear President Kurtz and Provost Bauer,

On February 16, 2018, Dean Milliken announced that she was opening a formal investigation against me under Article 18 of the Collective Bargaining Agreement. According to Gene Burns, you have the authority to overturn any disciplinary actions Dean Milliken might recommend after this investigation. So I am writing to request that you intervene to suspend this investigation before she issues a recommendation. After twenty-one years of exemplary service at Shawnee State, it is profoundly disturbing to be the subject of such an unfounded, unjust investigation. Furthermore, it would be in the best interests of all involved if this investigation were closed out immediately.

As you may not be aware of what led to this formal investigation, here is a brief summary. During the first class in my political philosophy class this semester, I responded to a question from a student, [REDACTED], by saying a simple, "Yes, sir." To all appearances, he is male, making this a natural response. I generally refer to students in class using a title (*e.g.*, "Mr.," "Ms.," "Miss") and their last name to foster an atmosphere of seriousness and mutual respect. Not only is this befitting of a college classroom, but this formality greatly assists the students in learning how to accept our differences in a mutually respectful manner, something that is particularly important when discussing extremely controversial topics, such as many of those addressed in my classes. But after class, this student approached me, informing me that he was transgender and demanding that I refer to him with feminine titles and pronouns, as this was his new gender. When I hesitated, he became belligerent, circling me and getting in my face. At one point, he remarked, "Then I guess this means I can call you a cunt." Before leaving, he indicated that he would see to it that I was fired if I did not accede to his demands.

In the weeks thereafter, I spoke repeatedly with Dean Milliken, trying to defuse this situation. I offered to call this student by his last name, thus avoiding any debate over titles or, if he preferred, by his first name. Dean Milliken rejected this approach unless I started referring to all students by their last names alone. But as I expressed to her, this would mean that we would refer to each other the same way as junior high students or teammates on an athletic field, not as scholars engaged in a serious enterprise. Indeed, in most professional settings where one person has some degree of authority (*e.g.*, courts of law, government hearing) participants do not refer to one another either by their first or last names alone. I also notified her of my religious convictions on the issue, hoping to find a way of defusing the matter while still allowing me to live and teach consistent with my

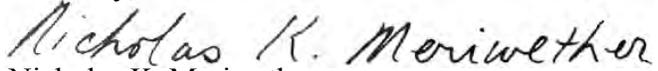
faith, as the enclosed e-mails demonstrate. After this, Dean Milliken indicated that even her proposed approach (*i.e.*, last names only) would violate University policy unless I also agreed to use feminine pronouns for male students and *vice versa* upon request. Indeed, it was my use of masculine pronouns—the standard conventions of English grammar—that sparked this investigation.

Thus, there is no basis for this formal investigation under Article 18, Section 2(C) of the Collective Bargaining Agreement. I have not engaged in any “serious professional misconduct” under Article 7 and have competently and faithfully discharged my professorial duties. Referring to men as “Mr.” and “he” and referring to women as “Ms.” and “she” does not imperil anyone’s health or safety, does not constitute “harassment” or “discrimination” (let alone “severe” harassment or discrimination), and does not impair my ability to fulfil my responsibilities to Shawnee State. This is especially true when I have proposed ways to accommodate students like the one whose complaint sparked this investigation.

At a time when public and state support for higher education is at an all-time low, becoming a lightning rod on such a contentious cultural issue—effectively compelling professors to endorse the transgender movement and policing the use of pronouns on pain of discipline or even dismissal—hardly seems like a prudent course of action for the University. Indeed, if Shawnee State wants to frighten students and parents away from considering it, it will do what Dean Milliken is doing right now: launching a formal investigation against a tenured professor simply because he used the English language in ways that have been utterly uncontroversial since the days of Chaucer.

To be clear, the student whose complaints sparked this investigation has every right to express his views, to try to persuade me to adopt them, and to criticize me if I do not. Indeed, I did not seek to bar him from my class after he used extreme profanity against me, encircled me in a threatening manner, and threatened to have me fired precisely because I thought his views should be represented in a political philosophy course. But on cultural issues like transgenderism, there should be room to differ for students as well as faculty, and the “marketplace of ideas” that universities purport to be is where that room to differ should be most on display. Indeed, the government has no business compelling people to express ideological beliefs they do not hold. I simply seek to exercise this freedom to disagree without having a state institution punish me for doing so. Therefore, I respectfully request that you intervene and suspend Dean Milliken’s investigation immediately.

Sincerely,


Nicholas K. Meriwether
Professor of Philosophy

From: Nicholas Meriwether
Sent: Thursday, March 1, 2018 1:46 AM
To: Roberta Milliken
Subject: Re: Clarifying University Policies

Dear Roberta,

Thanks for your response. But I need further clarification as to the terms of the policy. You indicate that it would be acceptable for me to call all students by his/her first or last name. However, you do not address the use of pronouns as it relates to students other than the student in question. If I chose to begin calling every student by his/her first or last name as you propose, I would still like to retain the ability to use biologically correct pronouns when referring to all students except the student in question. Would the policy prevent me from using biologically correct pronouns when referencing other students, as long as I addressed the student in question using first or last name and refrained from using pronouns?

Regards,

-- Nick

From: Roberta Milliken
Sent: Monday, February 26, 2018 1:55 AM
To: Nicholas Meriwether
Subject: RE: Clarifying University Policies

Hi, Nick—

The goal of University Policy 5.01REV is ensure that every student is treated the same in our classes to avoid issues of discrimination and/or harassment. Two of the options we have discussed and you have reiterated in your letter would seem to achieve this: calling every student in your classes by his/her last name or by his/her first name. The point is, again, to treat all of your students the same.

Best,
Roberta

Roberta Milliken, Ph.D.

Acting Dean of the College of Arts and Sciences
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662
740.351.3550

From: Nicholas Meriwether
Sent: Friday, February 23, 2018 8:51 AM
To: Roberta Milliken <rmilliken@shawnee.edu>
Cc: meriwether5@mac.com
Subject: Clarifying University Policies

Dear Roberta,

I am sending you this letter in order to get clarification regarding university policies regarding the way I address students. As you can see, I'm having formatting problems with the university email system, so I'm also attaching a hard copy.

Thank you in advance for your time.

Regards,

Nick

Nicholas K. Meriwether, PhD
Professor of Philosophy
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662

Roberta Milliken, PhD
Acting Dean of the College of Arts and Sciences
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662

Re: Clarifying University Policies

Dear Dean Milliken,

I have received your letter of February 13, 2018 and your e-mail of February 16, 2018 regarding the manner in which I address and refer to students in my classes. As I assess how to respond to these complaints and investigations, I wanted to clarify a few points and ensure that I correctly understand the University's policies on this issue.

First, please understand that my remarks to the student who lodged the complaint that sparked your February 16th e-mail were inadvertent. As you know, I am still assessing how to respond to your latest correspondence and the investigations they reference. I may ultimately conclude that I cannot comply with your directives due to my conscience, ethical or religious convictions, or my views on free speech. But when this student participated in class discussions on February 15th, my comments were the result of deeply-ingrained habit, following the standard conventions of English grammar and usage that until just recently were utterly uncontroversial.

Second, I need to inform you that in addition to other pedagogical, philosophical, and ethical concerns, I am a Christian. As such, it is my sincerely held religious belief, based on the Bible's teachings, that God created human beings as either male or female, that this gender is fixed in each person from the moment of conception, and that it cannot be changed. It is also my sincerely held religious belief that Scripture forbids affirming things that are not true (*e.g.*, Prov. 4:24, I Peter 2:1). Therefore, my religious beliefs and convictions forbid me from referring to a student who is biologically male using feminine titles (*e.g.*, Miss, Ms.) or pronouns and from referring to a student who is biologically female using masculine titles (*e.g.*, Mr.) or pronouns. I continue to hope that we can come to an arrangement that will satisfy your concerns and allow me to live in accordance with my faith and convictions, and I hope this notification helps you understand my perspective.

Third, I previously proposed an arrangement that I had hoped would resolve this matter. Specifically, I had offered to refer to the student whose complaints sparked your letters and this investigation by the legal name of choice (*i.e.*, first or last name) without using any title or pronoun, though I would continue to use biologically-appropriate pronouns for all others when the situation naturally called for it during the Socratic discussions that my classes feature. Of course, I was willing to do the same for any other student who requested it. But when we spoke on January 25th and February 12th, you indicated that this arrangement would violate the University's policy regarding sexual orientation and gender identity discrimination as it does not treat all students identically and that I should consider no longer referring to any student by "Mr." or "Ms." Please confirm that my understanding of University policy is correct.

As I assess my options, I would like to know whether another arrangement would comply with University policy. Let's say I started referring to all students by their last names, without using any titles, while still referring to all other students by their biologically-appropriate pronouns. To me, this approach of not using titles may undermine the atmosphere of mutual respect and seriousness that is befitting a college classroom, as my students and I would then refer to each other the same way as junior high students or teammates on an athletic field. While I remain concerned about this, at this point, I am just trying to ascertain whether this approach

would comply with the University policy of treating all students the same. Thank you in advance for letting me know whether it would and, if not, why it would not.

If University policy prohibits me from following this second approach, my understanding is that there is only one way for me to interact with students. That is, I would have to stop referring to students using titles (*i.e.*, just use their first or last names) and stop using pronouns altogether for any student. Please confirm whether my understanding of University policy and its implications for me is correct.

Again, I am writing this letter to explain a few matters and to clarify my options going forward. I look forward to receiving your responses and hope they will provide some clarity as I determine my next steps.

Sincerely,

Nicholas K. Meriwether



April 18, 2018

Dear Nick,

This letter is notification that I have received the investigative report conducted by Malonda Johnson, the Director of Human Resources and a Deputy Title IX Coordinator, regarding a complaint that was filed on February 15, 2018 by a student in your Spring 2018 Philosophy course. The report summarizes the complaint and relates it to violations of Shawnee State University's Policy 5.01 and Procedure 5.01:2.

The investigation did determine that your disparate treatment of the complainant in your class has caused a hostile environment. This is a violation of University Policy 5.01. As a result of these investigative findings, I have determined that a formal charge is warranted. In accordance with Article 18 in the CBA, you will have the opportunity to further review the charges and to provide a response. A conference has been scheduled at the following time and location:

Friday, April 27th at 9:00 on the CAS Dean's conference room.

You have the right to have an SEA representative with you at the conference.

Regards,

A handwritten signature in cursive script, appearing to read 'Roberta Milliken'.

Roberta Milliken, Ph.D.

Acting Dean of the College of Arts and Sciences
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662
rmilliken@shawnee.edu

From: Nicholas Meriwether
Sent: Saturday, April 21, 2018 8:57 AM
To: Douglas Shoemaker; Roberta Milliken; Malonda Johnson
Cc: Eugene Burns
Subject: Re: Title IX Investigation Report Conclusion and Findings

Dear Mr. Shoemaker, Ms. Johnson, and Dean Milliken,

Thank you very much for sending me a copy of the April 12, 2018 investigation report and for inviting me to seek additional information.

The report mentions Appendix A, which is apparently a summary of an interview with Dean Milliken discussing the informal resolution process. This document was never sent to me. Thank you very much for sending me a copy as soon as possible.

In addition, during the investigation, I provided the investigators with a copy of my correspondence with Dean Milliken, Provost Bauer, and President Kurtz. It is attached here for easy access. Thank you for including it in the final edition of the report, even if just as Appendix B, as it summarizes my views and positions.

Ms. Johnson's report contains one allegation that I do not recall the investigators asking me about during my interview, namely that I do not provide commentary in response to [REDACTED]'s contributions to the class discussion. This is simply not true. Those contributions receive the same level of attention and discussion from me as those from any other students, and [REDACTED] has continued to participate in class discussions on the same basis and with the same frequency as any other student.

Last, I do not recall making the statements about transgenderism that Ms. Johnson attributes to me in her report at the bottom of page three and the top of page four. My views on this issue are outlined in my correspondence with Dean Milliken, Provost Bauer, and President Kurtz.

Sincerely,

Nicholas K. Meriwether.

From: Douglas Shoemaker
Sent: Tuesday, April 17, 2018 3:12:50 AM
To: Nicholas Meriwether
Cc: Eugene Burns
Subject: Title IX Investigation Report Conclusion and Findings

Attached is the completed investigation report with findings. A copy of the report has been provided to Dr. Roberta Milliken for her assessment. Please contact me if you need any additional information. This concludes our Title IX process regarding this matter. Thank you.

Doug Shoemaker

Coordinator, Student Business Center
Title IX Coordinator
Shawnee State University
940 Second Street
Portsmouth, OH 45662
740-351-3363



From: Nicholas Meriwether
Sent: Tuesday, May 8, 2018 12:45 PM
To: Roberta Milliken
Subject: Response to Appendix A

Response to Appendix A

Dear Dean Milliken,

As you will recall, I received a copy of Appendix A to Ms. Johnson's investigation report on April 27, 2018, just shortly before we were to meet that day. As I needed some time to review this document before trying to discuss its contents, we postponed our meeting until May 9th.

To streamline that meeting, I wanted to respond to a few points in writing. Thank you in advance for including this e-mail in the collection of documents that get forwarded to the other officials who will review the proceedings so far.

In your summaries of our conversations, you allude to my beliefs regarding transgenderism, using the terms "lie" and "mental illness." These summaries are incomplete and thus do not accurately reflect my views, which I explained in my correspondence with you, Provost Bauer, and President Kurtz. To be clear, I do not believe that those who describe themselves as transgender or who claim to identify as something other than their biological sex are lying. That is, I do not believe they are saying something they know to be false. But as stated before, I believe that God created human beings as either male or female, that this gender is fixed in each person from the moment of conception, and that it cannot be changed. So these individuals sincerely believe something that is not true. The causes of this gender dysphoria are doubtlessly complex and best left to mental health professionals. But I should not be forced to affirm or contribute to this confusion in the way that I speak, as my religious convictions prohibit me from doing so and the First Amendment prevents the University from forcing me to violate those convictions.

Nor do your descriptions accurately reflect the tone of our conversations, which were all quite collegial, at least as far as I was concerned. The effort to read something into my tone of voice or body language is disappointing. For one thing, it was clear early on that this process focused on forcing me to affirm beliefs I do not hold, something any reasonable person would find objectionable. For another, sitting back in a chair with arms crossed is a common posture to assume when a visitor enters one's office.

Last, the summary provided in Appendix A is incomplete in that it ends on February 16, 2018. As you know, on February 23rd, I responded to your letter of February 13th and your e-mail of February 16th. This led to several exchanges between us and culminated in a letter to President Kurtz and Provost Bauer on March 12th. As these e-mails and letters summarize my views in my own words and outline the accommodations I proposed, I once again request that they be included in the record of this investigation. Please confirm that they, along with this e-mail, will be included as this matter proceeds to the next stages.

Sincerely,
Nicholas K. Meriwether

March 12, 2018

Nicholas K. Meriwether, PhD
Professor of Philosophy
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662

President Rick Kurtz
Office of the President
Provost Jeffrey A. Bauer
Office of the Provost
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662

Re: Request to Suspend Disciplinary Investigation

Dear President Kurtz and Provost Bauer,

On February 16, 2018, Dean Milliken announced that she was opening a formal investigation against me under Article 18 of the Collective Bargaining Agreement. According to Gene Burns, you have the authority to overturn any disciplinary actions Dean Milliken might recommend after this investigation. So I am writing to request that you intervene to suspend this investigation before she issues a recommendation. After twenty-one years of exemplary service at Shawnee State, it is profoundly disturbing to be the subject of such an unfounded, unjust investigation. Furthermore, it would be in the best interests of all involved if this investigation were closed out immediately.

As you may not be aware of what led to this formal investigation, here is a brief summary. During the first class in my political philosophy class this semester, I responded to a question from a student, [REDACTED], by saying a simple, "Yes, sir." To all appearances, he is male, making this a natural response. I generally refer to students in class using a title (*e.g.*, "Mr.," "Ms.," "Miss") and their last name to foster an atmosphere of seriousness and mutual respect. Not only is this befitting of a college classroom, but this formality greatly assists the students in learning how to accept our differences in a mutually respectful manner, something that is particularly important when discussing extremely controversial topics, such as many of those addressed in my classes. But after class, this student approached me, informing me that he was transgender and demanding that I refer to him with feminine titles and pronouns, as this was his new gender. When I hesitated, he became belligerent, circling me and getting in my face. At one point, he remarked, "Then I guess this means I can call you a cunt." Before leaving, he indicated that he would see to it that I was fired if I did not accede to his demands.

In the weeks thereafter, I spoke repeatedly with Dean Milliken, trying to defuse this situation. I offered to call this student by his last name, thus avoiding any debate over titles or, if he preferred, by his first name. Dean Milliken rejected this approach unless I started referring to all students by their last names alone. But as I expressed to her, this would mean that we would refer to each other the same way as junior high students or teammates on an athletic field, not as scholars engaged in a serious enterprise. Indeed, in most professional settings where one person has some degree of authority (*e.g.*, courts of law, government hearing) participants do not refer to one another either by their first or last names alone. I also notified her of my religious convictions on the issue, hoping to find a way of defusing the matter while still allowing me to live and teach consistent with my

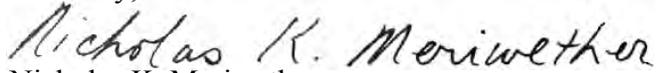
faith, as the enclosed e-mails demonstrate. After this, Dean Milliken indicated that even her proposed approach (*i.e.*, last names only) would violate University policy unless I also agreed to use feminine pronouns for male students and *vice versa* upon request. Indeed, it was my use of masculine pronouns—the standard conventions of English grammar—that sparked this investigation.

Thus, there is no basis for this formal investigation under Article 18, Section 2(C) of the Collective Bargaining Agreement. I have not engaged in any “serious professional misconduct” under Article 7 and have competently and faithfully discharged my professorial duties. Referring to men as “Mr.” and “he” and referring to women as “Ms.” and “she” does not imperil anyone’s health or safety, does not constitute “harassment” or “discrimination” (let alone “severe” harassment or discrimination), and does not impair my ability to fulfil my responsibilities to Shawnee State. This is especially true when I have proposed ways to accommodate students like the one whose complaint sparked this investigation.

At a time when public and state support for higher education is at an all-time low, becoming a lightning rod on such a contentious cultural issue—effectively compelling professors to endorse the transgender movement and policing the use of pronouns on pain of discipline or even dismissal—hardly seems like a prudent course of action for the University. Indeed, if Shawnee State wants to frighten students and parents away from considering it, it will do what Dean Milliken is doing right now: launching a formal investigation against a tenured professor simply because he used the English language in ways that have been utterly uncontroversial since the days of Chaucer.

To be clear, the student whose complaints sparked this investigation has every right to express his views, to try to persuade me to adopt them, and to criticize me if I do not. Indeed, I did not seek to bar him from my class after he used extreme profanity against me, encircled me in a threatening manner, and threatened to have me fired precisely because I thought his views should be represented in a political philosophy course. But on cultural issues like transgenderism, there should be room to differ for students as well as faculty, and the “marketplace of ideas” that universities purport to be is where that room to differ should be most on display. Indeed, the government has no business compelling people to express ideological beliefs they do not hold. I simply seek to exercise this freedom to disagree without having a state institution punish me for doing so. Therefore, I respectfully request that you intervene and suspend Dean Milliken’s investigation immediately.

Sincerely,


Nicholas K. Meriwether
Professor of Philosophy

From: Nicholas Meriwether
Sent: Thursday, March 1, 2018 1:46 AM
To: Roberta Milliken
Subject: Re: Clarifying University Policies

Dear Roberta,

Thanks for your response. But I need further clarification as to the terms of the policy. You indicate that it would be acceptable for me to call all students by his/her first or last name. However, you do not address the use of pronouns as it relates to students other than the student in question. If I chose to begin calling every student by his/her first or last name as you propose, I would still like to retain the ability to use biologically correct pronouns when referring to all students except the student in question. Would the policy prevent me from using biologically correct pronouns when referencing other students, as long as I addressed the student in question using first or last name and refrained from using pronouns?

Regards,

-- Nick

From: Roberta Milliken
Sent: Monday, February 26, 2018 1:55 AM
To: Nicholas Meriwether
Subject: RE: Clarifying University Policies

Hi, Nick—

The goal of University Policy 5.01REV is ensure that every student is treated the same in our classes to avoid issues of discrimination and/or harassment. Two of the options we have discussed and you have reiterated in your letter would seem to achieve this: calling every student in your classes by his/her last name or by his/her first name. The point is, again, to treat all of your students the same.

Best,
Roberta

Roberta Milliken, Ph.D.

Acting Dean of the College of Arts and Sciences
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662
740.351.3550

From: Nicholas Meriwether
Sent: Friday, February 23, 2018 8:51 AM
To: Roberta Milliken <rmilliken@shawnee.edu>
Cc: meriwether5@mac.com
Subject: Clarifying University Policies

Dear Roberta,

I am sending you this letter in order to get clarification regarding university policies regarding the way I address students. As you can see, I'm having formatting problems with the university email system, so I'm also attaching a hard copy.

Thank you in advance for your time.

Regards,

Nick

Nicholas K. Meriwether, PhD
Professor of Philosophy
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662

Roberta Milliken, PhD
Acting Dean of the College of Arts and Sciences
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662

Re: Clarifying University Policies

Dear Dean Milliken,

I have received your letter of February 13, 2018 and your e-mail of February 16, 2018 regarding the manner in which I address and refer to students in my classes. As I assess how to respond to these complaints and investigations, I wanted to clarify a few points and ensure that I correctly understand the University's policies on this issue.

First, please understand that my remarks to the student who lodged the complaint that sparked your February 16th e-mail were inadvertent. As you know, I am still assessing how to respond to your latest correspondence and the investigations they reference. I may ultimately conclude that I cannot comply with your directives due to my conscience, ethical or religious convictions, or my views on free speech. But when this student participated in class discussions on February 15th, my comments were the result of deeply-ingrained habit, following the standard conventions of English grammar and usage that until just recently were utterly uncontroversial.

Second, I need to inform you that in addition to other pedagogical, philosophical, and ethical concerns, I am a Christian. As such, it is my sincerely held religious belief, based on the Bible's teachings, that God created human beings as either male or female, that this gender is fixed in each person from the moment of conception, and that it cannot be changed. It is also my sincerely held religious belief that Scripture forbids affirming things that are not true (*e.g.*, Prov. 4:24, I Peter 2:1). Therefore, my religious beliefs and convictions forbid me from referring to a student who is biologically male using feminine titles (*e.g.*, Miss, Ms.) or pronouns and from referring to a student who is biologically female using masculine titles (*e.g.*, Mr.) or pronouns. I continue to hope that we can come to an arrangement that will satisfy your concerns and allow me to live in accordance with my faith and convictions, and I hope this notification helps you understand my perspective.

Third, I previously proposed an arrangement that I had hoped would resolve this matter. Specifically, I had offered to refer to the student whose complaints sparked your letters and this investigation by the legal name of choice (*i.e.*, first or last name) without using any title or pronoun, though I would continue to use biologically-appropriate pronouns for all others when the situation naturally called for it during the Socratic discussions that my classes feature. Of course, I was willing to do the same for any other student who requested it. But when we spoke on January 25th and February 12th, you indicated that this arrangement would violate the University's policy regarding sexual orientation and gender identity discrimination as it does not treat all students identically and that I should consider no longer referring to any student by "Mr." or "Ms." Please confirm that my understanding of University policy is correct.

As I assess my options, I would like to know whether another arrangement would comply with University policy. Let's say I started referring to all students by their last names, without using any titles, while still referring to all other students by their biologically-appropriate pronouns. To me, this approach of not using titles may undermine the atmosphere of mutual respect and seriousness that is befitting a college classroom, as my students and I would then refer to each other the same way as junior high students or teammates on an athletic field. While I remain concerned about this, at this point, I am just trying to ascertain whether this approach

would comply with the University policy of treating all students the same. Thank you in advance for letting me know whether it would and, if not, why it would not.

If University policy prohibits me from following this second approach, my understanding is that there is only one way for me to interact with students. That is, I would have to stop referring to students using titles (*i.e.*, just use their first or last names) and stop using pronouns altogether for any student. Please confirm whether my understanding of University policy and its implications for me is correct.

Again, I am writing this letter to explain a few matters and to clarify my options going forward. I look forward to receiving your responses and hope they will provide some clarity as I determine my next steps.

Sincerely,

Nicholas K. Meriwether



To: Dr. Nicholas Meriwether
Provost Jeff Bauer
Dr. Eugene Burns

From: Dr. Roberta Milliken *RTM*

Subject: Report of Dean's Findings regarding the Formal Investigation of Dr. Nicholas Meriwether

Date: May 29, 2018

On Thursday, January 11, 2018 Mr. Douglas Shoemaker, Title IX Coordinator, was notified about a complaint received from Ms. [REDACTED], a student at SSU, regarding her treatment in Dr. Meriwether's Political Philosophy class. The complainant had asked Dr. Meriwether to address her as he does other female students in his class, and Dr. Meriwether had resisted doing so. Mr. Shoemaker assessed the complaint and determined that it could be informally resolved. The complainant agreed. I, the Dean of the College of Arts and Sciences, then met with Dr. Meriwether on three separate occasions in attempts to informally resolve the complaint: around January 12, on January 25, and on February 12. None of the three attempts were successful, as Dr. Meriwether continued to refer to Ms. [REDACTED] differently than other students in the class.

On February 13, 2018, I sent Dr. Meriwether a written request that he adhere to Policy No. 5.01REV and treat Ms. [REDACTED] as he does other students in his class (See attachment A). On February 15, 2018, I received another complaint from Ms. [REDACTED] about how Dr. Meriwether continued to treat her differently than other students in class, and on February 16, 2018, I sent Dr. Meriwether a formal investigation notice (See attachment B). On March 12, Dr. Meriwether sent Provost Bauer and President Kurtz a request to suspend the formal investigation (See attachment C).

The case was assigned to Ms. Malonda Johnson, Deputy Title IX Coordinator, on February 16, 2018 who, with the note-taking assistance of Ms. Kara Arms, Human Resources Administrator, completed the investigation. Ms. Johnson interviewed Ms. [REDACTED] Dr. Meriwether, and two other witnesses. Because I was involved in the informal resolution attempts, I was also interviewed. At the conclusion of the investigation, Ms. Johnson completed a Title IX Investigative Report (See attachment D) dated April 17 in which she indicates that Dr. Meriwether's refusal to recognize the complainant's gender identity and his continued disparate treatment of her in his class created a hostile environment for the complainant.

After considering the report filed by Ms. Johnson, I determined that a charge was warranted and thus contacted Dr. Meriwether and the SEA on April 19 to set up a Dean's Conference pursuant to Article 18, section 3.C (See attachment E). The meeting was set for Friday, April 27. On Saturday, April 21, Dr. Meriwether requested that he receive a copy of the Appendix

A mentioned in the Title IX Investigative Report and that his email correspondence with me as well as Provost Bauer and President Kurtz be included in the report. Mr. Shoemaker acknowledged receipt of this request on April 23 and sent the requested information to Dr. Meriwether on April 27, 2018. Additionally, Mr. Shoemaker indicated that he would incorporate the correspondence Dr. Meriwether requested be added to the report as Appendix D. At the Dean's Conference scheduled for that day (April 27th) I presented Dr. Meriwether and Dr. Eugene Burns, the SEA representative, with copies of the Title IX Report and copies of the Board Policy 5.01REV: Nondiscrimination/Sexual Harassment Policy. Dr. Meriwether then requested a postponement of the Dean's Conference so that he could review the information recently supplied to him by Mr. Shoemaker. We agreed to meet again on May 9, 2018.

On Tuesday, May 8, 2018, I received an email from Dr. Meriwether titled Response to Appendix A (See attachment F). On May 9, 2018, we again met for the Dean's Conference. I asked if Dr. Meriwether and Dr. Burns needed copies of the documents, the Title IX Report and Board Policy 5.01REV, that I shared with them on April 27, 2018. Both indicated that they had copies of the documents. I reviewed the charge, the information provided in the report, and summarized the timeline of events related to the complaint. Once I finished, I asked Dr. Meriwether if he wanted to respond. He indicated that he already had in his email dated May 8, 2018 and that he had nothing else to add at that time.

At the conclusion of the conference, I indicated that everyone who is part of the university community is expected to adhere to the set policies and procedures of SSU, as these are established to communicate basic expectations of its employees and students. Because Dr. Meriwether repeatedly refused to change the way he addressed Ms. ██████ in his class due to his views on transgender people, and because the way he treated Ms. ██████ was deliberately different than the way he treated others in the class, I found that he effectively created a hostile environment for Ms. ██████. This is a direct violation of Policy No. 5.01REV. Therefore, in order to ensure a safe educational experience for all students, I proposed the formal action of a written warning being placed in Dr. Meriwether's personnel file.



February 13, 2018

Nicholas Meriwether, PhD
Professor, Department of Philosophy
MAS 407
Shawnee State University

BY INTEROFFICE MAIL

Dear Dr. Meriwether,

I have spoken with you several times, mostly recently on January 25 and February 13, regarding the informal complaint of a student in your Political Philosophy class that you did not address her as "Ms. _____" or "Miss _____," as you acknowledge you address other female members of the class, while you address male students as "Mr. _____." The complaint alleged that the student informed you that she identifies as a female. It was alleged that upon being notified of this, you began calling this particular student only by her surname, unlike the way you address other students, i.e., without preceding it with "Mr.," "Miss," or "Ms." and that last Tuesday you referred to the student as "he" in your class. The student has notified the Dean of Students that you have continued to ignore or reject her requests that you treat her the same as other students who identify themselves as female.

Policy No. 5.01REV, promulgated by the Shawnee State University Board of Trustees, has among its purposes the creation of an educational environment that prohibits discrimination on the basis of "race, color, genetic information, religion, age, disability, national origin, ancestry, sex, pregnancy, sexual orientation, gender identity, veteran status or military status." This letter is not a notification that you are being investigated for a policy violation. Rather, it is a formal notice that are expected to comply with Policy No. 5.01REV by treating all students the same, irrespective of their gender identity. Should there be future complaints of disparate treatment in violation of this policy, whether involving the student referred to above or not, the University may conduct an investigation in accordance with University policies and the faculty collective bargaining agreement. If such an investigation substantiates a complaint, you could be subject to informal or formal disciplinary action.

I look forward to your cooperation in this matter.

Regards,

A handwritten signature in cursive script, appearing to read 'Roberta Milliken'.

Roberta Milliken, Ph.D.
Acting Dean, College of Arts and Sciences

Roberta Milliken

From: Roberta Milliken
Sent: Friday, February 16, 2018 3:40 PM
To: Nicholas Meriwether
Cc: Eugene Burns (eburns@shawnee.edu); Malonda Johnson (mjohnson@shawnee.edu); Douglas Shoemaker
Subject: notification of investigation

Dear Nick,

This is to inform you that after receiving another complaint from a student in your Political Philosophy class, I am initiating a formal investigation as per Article 18 in the Collective Bargaining Agreement. Because the matter involves a potential violation of University Policy 5.01REV that addresses unlawful discrimination and harassment, I am also directing this complaint to the Director of Human Resources, Malonda Johnson, and the Title IX Coordinator, Douglas Shoemaker. This action is due to the allegation that you continue to address this student differently than others within the class by calling her by her surname while other students are addressed as Ms. ___ or Mr. ___. Additionally, the student alleges that a male pronoun was used in reference to her in class on February 15th. I anticipate that you will be contacted by Ms. Johnson and/or Mr. Shoemaker shortly. In the meantime, you have the right to consult with a representative of the SEA and/or OEA, and the right to request the presence of a representative of the SEA or OEA at any meeting with the investigating officer. If you have any questions about the process, please see Article 18 in the CBA.

Regards,

Roberta

Roberta Milliken, Ph.D.

Acting Dean of the College of Arts and Sciences
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662
740.351.3550

March 12, 2018

Nicholas K. Meriwether, PhD
Professor of Philosophy
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662

President Rick Kurtz
Office of the President
Provost Jeffrey A. Bauer
Office of the Provost
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662

Re: Request to Suspend Disciplinary Investigation

Dear President Kurtz and Provost Bauer,

On February 16, 2018, Dean Milliken announced that she was opening a formal investigation against me under Article 18 of the Collective Bargaining Agreement. According to Gene Burns, you have the authority to overturn any disciplinary actions Dean Milliken might recommend after this investigation. So I am writing to request that you intervene to suspend this investigation before she issues a recommendation. After twenty-one years of exemplary service at Shawnee State, it is profoundly disturbing to be the subject of such an unfounded, unjust investigation. Furthermore, it would be in the best interests of all involved if this investigation were closed out immediately.

As you may not be aware of what led to this formal investigation, here is a brief summary. During the first class in my political philosophy class this semester, I responded to a question from a student, [REDACTED], by saying a simple, "Yes, sir." To all appearances, he is male, making this a natural response. I generally refer to students in class using a title (*e.g.*, "Mr.," "Ms.," "Miss") and their last name to foster an atmosphere of seriousness and mutual respect. Not only is this befitting of a college classroom, but this formality greatly assists the students in learning how to accept our differences in a mutually respectful manner, something that is particularly important when discussing extremely controversial topics, such as many of those addressed in my classes. But after class, this student approached me, informing me that he was transgender and demanding that I refer to him with feminine titles and pronouns, as this was his new gender. When I hesitated, he became belligerent, circling me and getting in my face. At one point, he remarked, "Then I guess this means I can call you a cunt." Before leaving, he indicated that he would see to it that I was fired if I did not accede to his demands.

In the weeks thereafter, I spoke repeatedly with Dean Milliken, trying to defuse this situation. I offered to call this student by his last name, thus avoiding any debate over titles or, if he preferred, by his first name. Dean Milliken rejected this approach unless I started referring to all students by their last names alone. But as I expressed to her, this would mean that we would refer to each other the same way as junior high students or teammates on an athletic field, not as scholars engaged in a serious enterprise. Indeed, in most professional settings where one person has some degree of authority (*e.g.*, courts of law, government hearing) participants do not refer to one another either by their first or last names alone. I also notified her of my religious convictions on the issue, hoping to find a way of defusing the matter while still allowing me to live and teach consistent with my

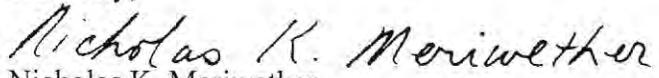
faith, as the enclosed e-mails demonstrate. After this, Dean Milliken indicated that even her proposed approach (*i.e.*, last names only) would violate University policy unless I also agreed to use feminine pronouns for male students and *vice versa* upon request. Indeed, it was my use of masculine pronouns—the standard conventions of English grammar—that sparked this investigation.

Thus, there is no basis for this formal investigation under Article 18, Section 2(C) of the Collective Bargaining Agreement. I have not engaged in any “serious professional misconduct” under Article 7 and have competently and faithfully discharged my professorial duties. Referring to men as “Mr.” and “he” and referring to women as “Ms.” and “she” does not imperil anyone’s health or safety, does not constitute “harassment” or “discrimination” (let alone “severe” harassment or discrimination), and does not impair my ability to fulfil my responsibilities to Shawnee State. This is especially true when I have proposed ways to accommodate students like the one whose complaint sparked this investigation.

At a time when public and state support for higher education is at an all-time low, becoming a lightning rod on such a contentious cultural issue—effectively compelling professors to endorse the transgender movement and policing the use of pronouns on pain of discipline or even dismissal—hardly seems like a prudent course of action for the University. Indeed, if Shawnee State wants to frighten students and parents away from considering it, it will do what Dean Milliken is doing right now: launching a formal investigation against a tenured professor simply because he used the English language in ways that have been utterly uncontroversial since the days of Chaucer.

To be clear, the student whose complaints sparked this investigation has every right to express his views, to try to persuade me to adopt them, and to criticize me if I do not. Indeed, I did not seek to bar him from my class after he used extreme profanity against me, encircled me in a threatening manner, and threatened to have me fired precisely because I thought his views should be represented in a political philosophy course. But on cultural issues like transgenderism, there should be room to differ for students as well as faculty, and the “marketplace of ideas” that universities purport to be is where that room to differ should be most on display. Indeed, the government has no business compelling people to express ideological beliefs they do not hold. I simply seek to exercise this freedom to disagree without having a state institution punish me for doing so. Therefore, I respectfully request that you intervene and suspend Dean Milliken’s investigation immediately.

Sincerely,


Nicholas K. Meriwether
Professor of Philosophy



INVESTIGATION REPORT

TO: Roberta Milliken, Dean, College of Arts and Sciences

FROM: Malonda Johnson, Director, Human Resources

DATE: April 17, 2018

RE: Investigation Results of Nicholas Meriwether

BACKGROUND & SCOPE OF INVESTIGATION

Initial complaint was received on Thursday, January 11, 2018 from Professor Marc Scott to Douglas Shoemaker (Title IX Coordinator). The complaint was assessed by Douglas Shoemaker (Title IX Coordinator) who determined the matter could be addressed through informal resolution. The path of informal resolution was agreed upon by the complainant. Roberta Milliken (Dean, College of Arts & Sciences) met with Professor Meriwether on three separate occasions in an effort to achieve informal resolution. On February 15, 2018 complainant informed Dean Milliken that Professor Meriwether's behavior had not changed. Due to unsatisfactory resolution of the situation, a decision was made to address this matter formally. Reference *Appendix A* for a timeline of events during the assessment and informal resolution period.

The case was assigned to Malonda Jonson (Deputy Title IX Coordinator) for investigation on February 16, 2018. Kara Arms (Human Resources Administrator) assisted with the investigation serving as primary note taker during all interviews. Investigation interviews commenced on February 26, 2018 with the following individuals:

- Witness Interview: Eric Clift (Student) – February 26, 2018 – 4:00pm
- Witness Interview: Catherine Koeppel (Student) – February 28, 2018 – 1:30pm
- Complainant Interview: [REDACTED] (Student) – February 28, 2018 – 4:00pm
- Respondent Interview: Nicholas Meriwether (Professor) – March 15, 2018 – 10:00am

To better understand what transpired during the informal resolution process, Dean Milliken was interviewed on March 22nd. A summary of those details are included in Appendix A.

The following section of Shawnee State University's Policy 5.01 (Non-Discrimination/Harassment) and Procedure 5.01:2 (Reporting & Investigating Sexual Assault, Sexual Misconduct & Other Forms of Discrimination) may have been violated by Mr. Meriwether:

- Section 18.6.2.2 Hostile environment toward complainant in an educational context

The complete policy can be found at:

<http://www.shawnee.edu/leadership/policies/media/procedure-501-2.pdf>

SUMMARY OF ALLEGATION(S)

Complainant, [REDACTED], transgender student who legally changed her name through the Registrar's office, alleges Professor Meriwether referred to her as "he" the first day of class. According to [REDACTED], she went up to Meriwether after class to ask that he refer to her using she/her pronouns. [REDACTED] shared that when she first approached Meriwether he said, "I think I know what this is about." He then started debating her and said it was his own opinion. [REDACTED] said she responded by telling him it was disrespectful and asked how he would feel if she referred to him as cunt. According to [REDACTED], Meriwether responded it wasn't the same thing. [REDACTED] shared that she asked Meriwether several times for a yes or no answer (to using female pronouns) and he responded saying he would say [REDACTED]. [REDACTED] shared that he uses pronouns for everyone else in the class.

[REDACTED] then shared that Meriwether kept referring to her as [REDACTED] and using masculine pronouns (he) after Dean Milliken had spoken with him twice. [REDACTED] shared that Meriwether stopped referring to her altogether or just says "you". [REDACTED] further indicated that there is no commentary from Meriwether when she raises her hand in class, but he provides commentary to everyone else.

SUMMARY OF WITNESSES ACCOUNT

- Below is the response from each witness regarding the treatment of transgender students:
 - **Witness #1:** On January 12, 2018 witness reported to Marcie Simms (Dean of Students) that he intends to take his Ethics course with another professor because Meriwether knew he was transgender, and refused to refer to him as male or call him by his preferred name. Witness also stated in this communication that Meriwether mentioned "having problems" with transgender students, so to alleviate problems in the class he agreed to Meriwether calling him by his last name.

During the investigation interview witness shared that his birth name was on the roster which is different than the registered name. Witness indicated he approached Meriwether during break because he didn't want there to be confusion when he turned his assignments in with his registered name. According to witness, Meriwether replied, "Oh, you're transgender - I don't recognize that and I won't call you by your preferred pronouns. The most I will do is call you by your last name, exclusively." As a result, witness ended up transferring to a different class.

Witness shared that after making a comment on social media, current and past students commented that Meriwether wouldn't get any better and recommended switching classes. Witness indicated that Meriwether refers to people by how they appear. He also shared that a Title IX event was cancelled out of concern that Meriwether and other students would cause a situation/conflict.
 - **Witness #2:** Witness is in the process of getting a name change, but hasn't told Professor Meriwether about the name change in fear of backlash. Witness has had multiple classes with Meriwether and overheard him announce his biases in front of

the class regarding gay rights and marriage and his opinions of LGBT are known. According to witness, Meriwether uses pronouns to address students and refers to them based on how they appear. Witness also shared that Meriwether picks and chooses students to call out in class (picking favorites).

SUMMARY OF RESPONDENT'S ACCOUNT

Professor Meriwether shared that his interactions with [REDACTED] have been quite good with the exception of the first day. Meriwether explained that after roll on the first day he looked over to Mr. [REDACTED] raising his hand. Meriwether explained that the student appeared to be a male so he responded by saying, "Yes, sir." Meriwether then shared that after class he (referring to [REDACTED]) approached him and said, "You need to refer to me as she." Meriwether responded, "I am not sure I can do that." According to Meriwether, [REDACTED] reacted in a threatening manner asking why, and Meriwether responded, "I'm not sure students can demand what they are called." According to Meriwether, [REDACTED] said, "Well, that means I can call you a cunt." According to Meriwether, [REDACTED] insisted that he would get him (Meriwether) fired over this.

Meriwether confirmed that he refers to other students using male or female pronouns when calling upon them in class, but addresses [REDACTED] as "[REDACTED]" if it comes up. According to Meriwether, it rarely comes up since it is a small class and he can simply point to him when he ([REDACTED]) raises his hand.

Meriwether shared that on a couple occasions he inadvertently/spontaneously used masculine pronouns after his conversations with Dean Milliken when referring to him ([REDACTED]). According to Meriwether this was because that was what he was used to.

Meriwether does not believe he has treated Bruening different than other students. He believes that he treats all students exactly the same, i.e., by referring to them by their biological gender, but [REDACTED] insists on being treated differently, i.e., by being referred to by his chosen gender. Meriwether indicated that he cannot accommodate him without violating his sincerely-held beliefs, but he is willing to find another mutually-acceptable accommodation, such as only using his legal name.

Meriwether recalled another transgender student approaching him at the beginning of the semester, but he does not recall the specifics of the interaction or what was said to this student.

FINDINGS

Professor Meriwether has been reluctant to address [REDACTED] using she/her pronouns. When called upon in class, [REDACTED] is referred to as "[REDACTED]" whereas all other students are addressed using formal Mr. Surname and Ms. Surname. While asked on several occasions to address [REDACTED] in the same manner as other students, Meriwether indicated he would call [REDACTED] by "his" legal name, "[REDACTED]" or "[REDACTED]" but continue to use Mr. Surname and Ms. Surname for the others.

Professor Meriwether refuses to use preferred pronouns when addressing transgender students. He views this as a matter of academic freedom and truth that he intends to exercise. Professor

Meriwether on several occasions communicated that he does not recognize transgenderism – he specifically stated that he believes transgender is a lie and mental illness and that Professors should not have to change.

University Policy 5.01 Non-Discrimination/Harassment prohibits discrimination against any individual because of race, color, genetic information, religion, age, disability, national origin, ancestry, sex, pregnancy, sexual orientation, gender identity, veteran status or military status. Applicable Procedure 5.01:2, defines gender identify as a person’s innermost concept of self as male or female or both or neither—how individuals perceive themselves and what they call themselves. One's gender identity can be the same or different than the sex assigned at birth.

In this case, the complainant perceives them self as a female which is different than the sex assigned at birth. Professor Meriwether however will only refer to students by their sex assigned at birth. Professor Meriwether refuses to recognize the complainant based on their gender identity (female), and continues to treat the complainant differently than other students when being addressed in class (i.e. being called upon as “██████” or “██████” while others are called upon using pronouns).

It is concluded that Professor Meriwether’s disparate treatment has created a hostile environment for the complainant, which is a violation of Shawnee State University’s Policy 5.01 (Non-Discrimination/Harassment).

APPENDIX A: Timeline of Events During Assessment & Informal Resolution Period

- **1/11/2018:** Professor Marc Scott emailed Title IX Coordinator, Douglas Shoemaker reporting information he received from a Department Chairperson. The Department Chair reported that a Professor shared with them their interaction with a student on 1/10/2018 after the student asked the Professor to refer to them using pronouns for a woman. According to the Professor, the student asked them to refer to the student using pronouns for a woman. The Professor indicated they responded to the student that they would not do so. The Professor stated after class the student approached them and repeated the request for the Professor to use gender pronouns that conformed to her gender identity. The Professor again refused. The Professor said a heated exchange occurred and at one point the student asked “Well, what if I just decided to call you a cunt?”. The Professor stated that it was not the same issue. The Professor said the student then stated she would be filing a complaint and speaking with Dr. Scott. The Chair reporting the incident to Professor Scott indicated that the Professor was using male pronouns when recounting the interaction they had with the student.
- **1/11/2018:** Dean Simms emailed Title IX Coordinator, Douglas Shoemaker reporting she received an email from Professor Nicholas Meriwether describing an interaction he had with a student (██████████) on 1/10/2018. His remarks in the email corresponded with the remarks Professor Scott had received from the Department Chair the previous day. In the email he stated he wanted Dean Simms to be aware because he was concerned the student might become “aggressive” in class. Professor Meriwether also stated he had notified security in case “I need to ask him to leave”. He also stated in the email that he had told Bruening that “I don’t think people should tell me what I can or can’t call them”. He used male pronouns referring to ██████████ throughout the email.
- **1/11/2018:** Title IX Coordinator, Douglas Shoemaker met with student ██████████. Her account of the interaction with Professor Meriwether corresponded with what had already been reported. Bruening further stated she would be comfortable with an informal resolution to the issue and that she just wanted to be called by her preferred pronoun and not be treated differently.
- **1/12/2018:** Title IX Coordinator advised Dean Milliken of the situation and decision to not move forward with an investigation, as both parties were in agreement as to what had transpired between them. It was also communicated to Dean Milliken that ██████████ was comfortable with an informal resolution. Dean Milliken agreed to discuss the situation with Professor Meriwether and come to an agreement that would make all parties comfortable.
- **1/2018:** Sometime around January 12th (date unknown), Dean Milliken met with Professor Meriwether. Meriwether provided his account of what occurred on January 10th and his disbelief in transgenderism. He explained that he thought it was an illness and a lie, and he didn’t want to be forced to lie because it wouldn’t be true. Milliken explained to Meriwether, that that may be his philosophy, but the student wasn’t feeling comfortable in his class. Meriwether also shared that he liked to use formal Mr. Surname and Ms. Surname in class. Milliken explained that she felt it may not be an issue if he agreed to refer to ██████████ by her surname.

- **1/22/2018:** Title IX Coordinator followed-up with ██████ by phone and emailed Dean Milliken informing her of the conversation with ██████. ██████ shared there had been no further confrontations with Professor Meriwether, but she still did not feel an adequate solution had been reached. She stated Professor Meriwether only refers to her as “██████” when he calls on her and he continues to refer to other students as “Ms. Smith or Mr. Jones” and uses he/his or her/hers in conversation with them but will only call ██████ “██████”. For example, “██████ was correct in ██████’s answer and so ██████ doesn’t have to answer the next question.” She stated this is not an acceptable solution and that she still feels she is being treated differently than the other students which is continuing to make her uncomfortable in his class. Title IX Coordinator informed Dean Milliken that he felt an informal discussion with Dr. Meriwether is still the most reasonable way to handle this situation. However, he was concerned that we have been put on notice by this student she is not satisfied with our resolution thus far and that she still feels like the classroom is a hostile environment.
- **1/23/2018:** Dean Milliken advised Title IX Coordinator that she would have a meeting with Professor Meriwether the following day to discuss the unsatisfactory resolution of the situation.
- **1/25/2018:** Dean Milliken had a second meeting with Meriwether to discuss the student being uncomfortable with him continuing to use only her surname and the formal Mr. Surname and Ms. Surname with other students. Milliken explained to Meriwether that the student felt she was being treated differently. Milliken asked Meriwether once again to change how he addressed the student and advised him of the Non-Discrimination policy. Meriwether responded that he didn’t want to and thought it was a matter of academic freedom and truth. According to Milliken, Nick was upset and he stated, again, that transgender is a lie and a mental illness. He stated he felt he was still right, and asked what the university would do if he refused to call the student by the name/pronouns requested. Milliken responded that himself and the University could be vulnerable to legal action. Meriwether indicated he had consulted a lawyer and had legal counsel for himself.

During the meeting Meriwether discussed the “wrongness” of transgender people and linked it to safe spaces and how he was treated when he went to school, indicating that people need to toughen up. He specified that the Professor shouldn’t have to change and the student should accept it. He said it was dignified to call students by their formal name in class and makes them take the class more seriously. Meriwether said it was his preference and he was exercising his academic freedom to do so, and asked Milliken if he should now add a disclaimer to the bottom of his syllabus, or make an announcement to his class that he would now call everyone by their last name but it is not because I believe in or endorse transgender people. Milliken explained that she didn’t think it was a good idea, and it would make the students feel even more singled out. Milliken asked Nick again if he would think about only using last names in class. He said he would have to check with friends, but wasn’t sure if he would. According to Milliken, he said he might be open to calling a student by his/her preferred name if a student seemed frail or distressed. As an example, if a student came to him with a trembling lip, then he might consider it, out of fear the student might potentially harm him/herself. Meriwether then explained that the student in question, is not that (frail), and he thinks “he” (the student) has an agenda.

- **2/2018:** Title IX Coordinator received a call from Tena Pierce, Executive Assistant to Dr. Anne Marie Gillespie, Vice President of EMSA, that student ██████ had been to their office to voice her concerns. ██████ indicated to Pierce that she was scheduled to meet with Dean Simms but wanted to make sure leadership was aware that her complaint had not been resolved and she did not believe anything was being done to address it. She stated she did not wish to speak with Title IX any further and that if something was not done about the discrimination, she would seek a lawyer.
- **2/6/2018:** Title IX Coordinator discussed matter with General Counsel who advised that Dean Milliken would be taking next steps to address this matter.
- **2/7/2018:** Dean Simms and Milliken met with ██████ to let her know the University was addressing the matter.
- **2/12/2018:** Dean Milliken had a third meeting with Professor Meriwether. According to Milliken, before the meeting started, his body language said it all. When she entered, he sat back in his chair and crossed his arms. Meriwether told her that he would send an email with a compromise, explaining that he would call ██████ by "his" legal name, "█████" or "█████". Milliken asked if it would be addressing the other students in the class the same way, and he said no, that he would continue to use Mr. Surname and Ms. Surname for the others. Milliken reminded Meriwether of the Non-Discrimination policy. He replied that he did not think it applied and that he thought this was more an academic freedom issue. He continued by saying that if he capitulated, it would lead to the corruption of the English language and that the student would have won.

Milliken also shared that Meriwether said he believed some campus departments were encouraging the student to complain against him. Milliken asked him which department he thought was doing this, and he said the Diversity Office. Milliken assured him that was not the case. According to Milliken, Meriwether kept talking about not believing in the notion of transgender people, how he believed it to be an illness that caused corruptions and social problems, and that there is no scientific proof it exists. Milliken indicated that with all their meetings, she had to try and bring Meriwether back from talking about his more general philosophies to the fact that there was a student in his class who was feeling singled out, that Meriwether was treating differently. Meriwether indicated that he wished he would have just removed the student from the class at the beginning after they had had the altercation.

2/13/2018: Dean Milliken sent a written communication to Professor Meriwether regarding their meeting on February 12th (*Appendix B*)

2/15/2018: ██████ informed Milliken that Meriwether's behavior had not changed (*Appendix C*).

2/16/2018: Dean Milliken sent Professor Meriwether the formal investigation notice.



February 13, 2018

Nicholas Meriwether, PhD
Professor, Department of Philosophy
MAS 407
Shawnee State University

BY INTEROFFICE MAIL

Dear Dr. Meriwether,

I have spoken with you several times, mostly recently on January 25 and February 13, regarding the informal complaint of a student in your Political Philosophy class that you did not address her as "Ms. _____" or "Miss _____," as you acknowledge you address other female members of the class, while you address male students as "Mr. _____." The complaint alleged that the student informed you that she identifies as a female. It was alleged that upon being notified of this, you began calling this particular student only by her surname, unlike the way you address other students, i.e., without preceding it with "Mr.," "Miss," or "Ms." and that last Tuesday you referred to the student as "he" in your class. The student has notified the Dean of Students that you have continued to ignore or reject her requests that you treat her the same as other students who identify themselves as female.

Policy No. 5.01REV, promulgated by the Shawnee State University Board of Trustees, has among its purposes the creation of an educational environment that prohibits discrimination on the basis of "race, color, genetic information, religion, age, disability, national origin, ancestry, sex, pregnancy, sexual orientation, gender identity, veteran status or military status." This letter is not a notification that you are being investigated for a policy violation. Rather, it is a formal notice that you are expected to comply with Policy No. 5.01REV by treating all students the same, irrespective of their gender identity. Should there be future complaints of disparate treatment in violation of this policy, whether involving the student referred to above or not, the University may conduct an investigation in accordance with University policies and the faculty collective bargaining agreement. If such an investigation substantiates a complaint, you could be subject to informal or formal disciplinary action.

I look forward to your cooperation in this matter.

Regards,

A handwritten signature in cursive script, appearing to read 'Roberta Milliken'.

Roberta Milliken, Ph.D.
Acting Dean, College of Arts and Sciences

Office of the Dean
College of Arts and Sciences
www.shawnee.edu
740.351.3550 ■ 740.351.3596 fax
940 Second Street ■ Portsmouth, Ohio 45662-4344

Appendix C

FEB 15 2018

3:27pm

Hi Roberta!

Dean's Office

This is [redacted], we spoke over Title IX issues regarding Meriwether. I don't know if you spoke to him ~~about~~ again about fixing pronouns, but I just wanted to stop by and leave a record of what happened today. We took a quiz in class and immediately went over it. Professor Meriwether asked ~~about~~ about an answer to which I gave. He said in/to the class, "The way he put - uh sorry, the way [redacted] put it is correct." which happened at 2:26pm today, February 15th 2018.

Thank you for trying to help get this issue fixed,

-Alena

to contact me my information is
Student # [redacted]
Phone # [redacted]
email - [redacted]
or [redacted]

March 12, 2018

Nicholas K. Meriwether, PhD
Professor of Philosophy
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662

President Rick Kurtz
Office of the President
Provost Jeffrey A. Bauer
Office of the Provost
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662

Re: Request to Suspend Disciplinary Investigation

Dear President Kurtz and Provost Bauer,

On February 16, 2018, Dean Milliken announced that she was opening a formal investigation against me under Article 18 of the Collective Bargaining Agreement. According to Gene Burns, you have the authority to overturn any disciplinary actions Dean Milliken might recommend after this investigation. So I am writing to request that you intervene to suspend this investigation before she issues a recommendation. After twenty-one years of exemplary service at Shawnee State, it is profoundly disturbing to be the subject of such an unfounded, unjust investigation. Furthermore, it would be in the best interests of all involved if this investigation were closed out immediately.

As you may not be aware of what led to this formal investigation, here is a brief summary. During the first class in my political philosophy class this semester, I responded to a question from a student, [REDACTED], by saying a simple, "Yes, sir." To all appearances, he is male, making this a natural response. I generally refer to students in class using a title (*e.g.*, "Mr.," "Ms.," "Miss") and their last name to foster an atmosphere of seriousness and mutual respect. Not only is this befitting of a college classroom, but this formality greatly assists the students in learning how to accept our differences in a mutually respectful manner, something that is particularly important when discussing extremely controversial topics, such as many of those addressed in my classes. But after class, this student approached me, informing me that he was transgender and demanding that I refer to him with feminine titles and pronouns, as this was his new gender. When I hesitated, he became belligerent, circling me and getting in my face. At one point, he remarked, "Then I guess this means I can call you a cunt." Before leaving, he indicated that he would see to it that I was fired if I did not accede to his demands.

In the weeks thereafter, I spoke repeatedly with Dean Milliken, trying to defuse this situation. I offered to call this student by his last name, thus avoiding any debate over titles or, if he preferred, by his first name. Dean Milliken rejected this approach unless I started referring to all students by their last names alone. But as I expressed to her, this would mean that we would refer to each other the same way as junior high students or teammates on an athletic field, not as scholars engaged in a serious enterprise. Indeed, in most professional settings where one person has some degree of authority (*e.g.*, courts of law, government hearing) participants do not refer to one another either by their first or last names alone. I also notified her of my religious convictions on the issue, hoping to find a way of defusing the matter while still allowing me to live and teach consistent with my

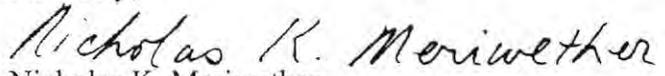
faith, as the enclosed e-mails demonstrate. After this, Dean Milliken indicated that even her proposed approach (*i.e.*, last names only) would violate University policy unless I also agreed to use feminine pronouns for male students and *vice versa* upon request. Indeed, it was my use of masculine pronouns—the standard conventions of English grammar—that sparked this investigation.

Thus, there is no basis for this formal investigation under Article 18, Section 2(C) of the Collective Bargaining Agreement. I have not engaged in any “serious professional misconduct” under Article 7 and have competently and faithfully discharged my professorial duties. Referring to men as “Mr.” and “he” and referring to women as “Ms.” and “she” does not imperil anyone’s health or safety, does not constitute “harassment” or “discrimination” (let alone “severe” harassment or discrimination), and does not impair my ability to fulfil my responsibilities to Shawnee State. This is especially true when I have proposed ways to accommodate students like the one whose complaint sparked this investigation.

At a time when public and state support for higher education is at an all-time low, becoming a lightning rod on such a contentious cultural issue—effectively compelling professors to endorse the transgender movement and policing the use of pronouns on pain of discipline or even dismissal—hardly seems like a prudent course of action for the University. Indeed, if Shawnee State wants to frighten students and parents away from considering it, it will do what Dean Milliken is doing right now: launching a formal investigation against a tenured professor simply because he used the English language in ways that have been utterly uncontroversial since the days of Chaucer.

To be clear, the student whose complaints sparked this investigation has every right to express his views, to try to persuade me to adopt them, and to criticize me if I do not. Indeed, I did not seek to bar him from my class after he used extreme profanity against me, encircled me in a threatening manner, and threatened to have me fired precisely because I thought his views should be represented in a political philosophy course. But on cultural issues like transgenderism, there should be room to differ for students as well as faculty, and the “marketplace of ideas” that universities purport to be is where that room to differ should be most on display. Indeed, the government has no business compelling people to express ideological beliefs they do not hold. I simply seek to exercise this freedom to disagree without having a state institution punish me for doing so. Therefore, I respectfully request that you intervene and suspend Dean Milliken’s investigation immediately.

Sincerely,


Nicholas K. Meriwether
Professor of Philosophy

From: Nicholas Meriwether
Sent: Thursday, March 1, 2018 1:46 AM
To: Roberta Milliken
Subject: Re: Clarifying University Policies

Dear Roberta,

Thanks for your response. But I need further clarification as to the terms of the policy. You indicate that it would be acceptable for me to call all students by his/her first or last name. However, you do not address the use of pronouns as it relates to students other than the student in question. If I chose to begin calling every student by his/her first or last name as you propose, I would still like to retain the ability to use biologically correct pronouns when referring to all students except the student in question. Would the policy prevent me from using biologically correct pronouns when referencing other students, as long as I addressed the student in question using first or last name and refrained from using pronouns?

Regards,

-- Nick

From: Roberta Milliken
Sent: Monday, February 26, 2018 1:55 AM
To: Nicholas Meriwether
Subject: RE: Clarifying University Policies

Hi, Nick—

The goal of University Policy 5.01REV is ensure that every student is treated the same in our classes to avoid issues of discrimination and/or harassment. Two of the options we have discussed and you have reiterated in your letter would seem to achieve this: calling every student in your classes by his/her last name or by his/her first name. The point is, again, to treat all of your students the same.

Best,
Roberta

Roberta Milliken, Ph.D.

Acting Dean of the College of Arts and Sciences
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662
740.351.3550

From: Nicholas Meriwether
Sent: Friday, February 23, 2018 8:51 AM
To: Roberta Milliken <rmilliken@shawnee.edu>
Cc: meriwether5@mac.com
Subject: Clarifying University Policies

Dear Roberta,

I am sending you this letter in order to get clarification regarding university policies regarding the way I address students. As you can see, I'm having formatting problems with the university email system, so I'm also attaching a hard copy.

Thank you in advance for your time.

Regards,

Nick

Nicholas K. Meriwether, PhD
Professor of Philosophy
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662

Roberta Milliken, PhD
Acting Dean of the College of Arts and Sciences
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662

Re: Clarifying University Policies

Dear Dean Milliken,

I have received your letter of February 13, 2018 and your e-mail of February 16, 2018 regarding the manner in which I address and refer to students in my classes. As I assess how to respond to these complaints and investigations, I wanted to clarify a few points and ensure that I correctly understand the University's policies on this issue.

First, please understand that my remarks to the student who lodged the complaint that sparked your February 16th e-mail were inadvertent. As you know, I am still assessing how to respond to your latest correspondence and the investigations they reference. I may ultimately conclude that I cannot comply with your directives due to my conscience, ethical or religious convictions, or my views on free speech. But when this student participated in class discussions on February 15th, my comments were the result of deeply-ingrained habit, following the standard conventions of English grammar and usage that until just recently were utterly uncontroversial.

Second, I need to inform you that in addition to other pedagogical, philosophical, and ethical concerns, I am a Christian. As such, it is my sincerely held religious belief, based on the Bible's teachings, that God created human beings as either male or female, that this gender is fixed in each person from the moment of conception, and that it cannot be changed. It is also my sincerely held religious belief that Scripture forbids affirming things that are not true (*e.g.*, Prov. 4:24, I Peter 2:1). Therefore, my religious beliefs and convictions forbid me from referring to a student who is biologically male using feminine titles (*e.g.*, Miss, Ms.) or pronouns and from referring to a student who is biologically female using masculine titles (*e.g.*, Mr.) or pronouns. I continue to hope that we can come to an arrangement that will satisfy your concerns and allow me to live in accordance with my faith and convictions, and I hope this notification helps you understand my perspective.

Third, I previously proposed an arrangement that I had hoped would resolve this matter. Specifically, I had offered to refer to the student whose complaints sparked your letters and this investigation by the legal name of choice (*i.e.*, first or last name) without using any title or pronoun, though I would continue to use biologically-appropriate pronouns for all others when the situation naturally called for it during the Socratic discussions that my classes feature. Of course, I was willing to do the same for any other student who requested it. But when we spoke on January 25th and February 12th, you indicated that this arrangement would violate the University's policy regarding sexual orientation and gender identity discrimination as it does not treat all students identically and that I should consider no longer referring to any student by "Mr." or "Ms." Please confirm that my understanding of University policy is correct.

As I assess my options, I would like to know whether another arrangement would comply with University policy. Let's say I started referring to all students by their last names, without using any titles, while still referring to all other students by their biologically-appropriate pronouns. To me, this approach of not using titles may undermine the atmosphere of mutual respect and seriousness that is befitting a college classroom, as my students and I would then refer to each other the same way as junior high students or teammates on an athletic field. While I remain concerned about this, at this point, I am just trying to ascertain whether this approach

would comply with the University policy of treating all students the same. Thank you in advance for letting me know whether it would and, if not, why it would not.

If University policy prohibits me from following this second approach, my understanding is that there is only one way for me to interact with students. That is, I would have to stop referring to students using titles (*i.e.*, just use their first or last names) and stop using pronouns altogether for any student. Please confirm whether my understanding of University policy and its implications for me is correct.

Again, I am writing this letter to explain a few matters and to clarify my options going forward. I look forward to receiving your responses and hope they will provide some clarity as I determine my next steps.

Sincerely,

Nicholas K. Meriwether

Roberta Milliken

From: Roberta Milliken
Sent: Thursday, April 19, 2018 12:18 PM
To: Nicholas Meriwether
Cc: Eugene Burns (eburns@shawnee.edu); Jeff Bauer (jbauer@shawnee.edu)
Subject: Notification of Charges
Attachments: Meriwether Charge Notice.pdf

Dear Nick,

I am notifying you that I have received the investigative report conducted by Malonda Johnson, the Director of Human Resources and a Deputy Title IX Coordinator, regarding a complaint that was filed on February 15, 2018 by a student in your Spring 2018 Philosophy course. The report summarizes the complaint and relates it to violations of Shawnee State University's Policy 5.01 and Procedure 5.01:2.

The investigation did determine that your disparate treatment of the complainant in your class has caused a hostile environment. This is a violation of University Policy 5.01. As a result of these investigative findings, I have determined that a formal charge is warranted. In accordance with Article 18 in the CBA, you will have the opportunity to further review the charges and to provide a response. A conference has been scheduled at the following time and location:

Friday, April 27rd at 9:00 on the CAS Dean's conference room.

You have the right to have an SEA representative with you at the conference.

Regards,

Roberta

Roberta Milliken, Ph.D.

Acting Dean of the College of Arts and Sciences
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662
740.351.3550



April 18, 2018

Dear Nick,

This letter is notification that I have received the investigative report conducted by Malonda Johnson, the Director of Human Resources and a Deputy Title IX Coordinator, regarding a complaint that was filed on February 15, 2018 by a student in your Spring 2018 Philosophy course. The report summarizes the complaint and relates it to violations of Shawnee State University's Policy 5.01 and Procedure 5.01:2.

The investigation did determine that your disparate treatment of the complainant in your class has caused a hostile environment. This is a violation of University Policy 5.01. As a result of these investigative findings, I have determined that a formal charge is warranted. In accordance with Article 18 in the CBA, you will have the opportunity to further review the charges and to provide a response. A conference has been scheduled at the following time and location:

Friday, April 27th at 9:00 on the CAS Dean's conference room.

You have the right to have an SEA representative with you at the conference.

Regards,

A handwritten signature in black ink, appearing to read 'Roberta Milliken', is written over a horizontal line.

Roberta Milliken, Ph.D.

Acting Dean of the College of Arts and Sciences
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662
rmilliken@shawnee.edu

ATTACHED F

Roberta Milliken

From: Nicholas Meriwether
Sent: Tuesday, May 8, 2018 8:46 PM
To: Roberta Milliken
Subject: Response to Appendix A
Attachments: 2018.03.12 Meriwether Letter to President & Provost.pdf

Response to Appendix A

Dear Dean Milliken,

As you will recall, I received a copy of Appendix A to Ms. Johnson's investigation report on April 27, 2018, just shortly before we were to meet that day. As I needed some time to review this document before trying to discuss its contents, we postponed our meeting until May 9th.

To streamline that meeting, I wanted to respond to a few points in writing. Thank you in advance for including this e-mail in the collection of documents that get forwarded to the other officials who will review the proceedings so far.

In your summaries of our conversations, you allude to my beliefs regarding transgenderism, using the terms "lie" and "mental illness." These summaries are incomplete and thus do not accurately reflect my views, which I explained in my correspondence with you, Provost Bauer, and President Kurtz. To be clear, I do not believe that those who describe themselves as transgender or who claim to identify as something other than their biological sex are lying. That is, I do not believe they are saying something they know to be false. But as stated before, I believe that God created human beings as either male or female, that this gender is fixed in each person from the moment of conception, and that it cannot be changed. So these individuals sincerely believe something that is not true. The causes of this gender dysphoria are doubtlessly complex and best left to mental health professionals. But I should not be forced to affirm or contribute to this confusion in the way that I speak, as my religious convictions prohibit me from doing so and the First Amendment prevents the University from forcing me to violate those convictions.

Nor do your descriptions accurately reflect the tone of our conversations, which were all quite collegial, at least as far as I was concerned. The effort to read something into my tone of voice or body language is disappointing. For one thing, it was clear early on that this process focused on forcing me to affirm beliefs I do not hold, something any reasonable person would find objectionable. For another, sitting back in a chair with arms crossed is a common posture to assume when a visitor enters one's office.

Last, the summary provided in Appendix A is incomplete in that it ends on February 16, 2018. As you know, on February 23rd, I responded to your letter of February 13th and your e-mail of February 16th. This led to several exchanges between us and culminated in a letter to President Kurtz and Provost Bauer on March 12th. As these e-mails and letters summarize my views in my own words and outline the accommodations I proposed, I once again request that they be included in the record of this investigation. Please confirm that they, along with this e-mail, will be included as this matter proceeds to the next stages.

Sincerely,

Nicholas K. Meriwether

From: Nicholas Meriwether
Sent: Friday, June 1, 2018 6:29 AM
To: Jeff Bauer
Cc: Roberta Milliken; Eugene Burns; Pamela Otworth
Subject: Re: Report on Formal Investigation

Dear Provost Bauer

Thank you for reaching out to set up the conference to discuss Dean Milliken's report. Gene Burns and I are available on June 4th. If that does not work, Gene's next availability is July 15th. Whenever the schedules align, I look forward to meeting with you, but I will respond to Dean Milliken's report in writing here to make that meeting more efficient. I have previously responded to other inaccuracies and mischaracterizations of my views and actions, and you can find those responses in the documents attached to Dean Milliken's report (*e.g.*, Attachment C, Appendix D to Attachment D, and Attachment F).

Throughout her report, Dean Milliken repeatedly characterizes my actions as treating [REDACTED] differently than other students. But it is important to remember that this whole controversy arose because I was treating him precisely the same as I treat all other students. Regardless of his gender identity, [REDACTED] is biologically male, and I referred to him the same way as I refer to all other biologically male students, using the title "Mr." and masculine pronouns. After [REDACTED] objected, I changed my standard practice and no longer referred to him as "Mr." to accommodate [REDACTED]'s request.

Not satisfied with this, [REDACTED] insisted that I use feminine pronouns when addressing him, and Dean Milliken now endorses that demand. Though I have tried to accommodate [REDACTED], my conscience and religious convictions will not allow me to do this, as I explained to Dean Milliken on February 23rd and to you on March 12th. To do so would be to endorse and communicate beliefs about human nature I do not hold, and I should not be compelled to do this.

Throughout this process, no one has even alleged that I treated [REDACTED] differently than other students in any other way because I never did. He continued to participate actively in class discussions on the same basis as any other student, and he was evaluated based on the quality of his assignments—just like every other student. So despite this controversy, his access to educational benefits and opportunities was never jeopardized.

Thus, the sole question before you is whether the University will compel me to communicate publicly views about human nature—on a newly emerging cultural issue on which reasonable minds should be allowed to differ—that I do not hold and that would violate my sincerely held religious convictions. As my repeated efforts to defuse this matter have proved futile, I respectfully request that you dismiss the charges against me in full under Article 18, Section 4(D)(1) of the Collective Bargaining Agreement.

Sincerely,

Nicholas K. Meriwether

From: Jeff Bauer
Sent: Wednesday, May 30, 2018 9:31:02 AM
To: Nicholas Meriwether
Cc: Roberta Milliken; Eugene Burns; Pamela Otworth
Subject: RE: Report on Formal Investigation

Dr. Meriwether,

Dean Milliken has issued a report and recommendation for you to receive formal discipline based on the findings of an investigation conducted during spring semester 2018. The Collective Bargaining Agreement, Article 18, Section 4A and B states that “within five (5) working days of the issuance of the Dean’s report the Provost shall schedule a formal disciplinary conference with the bargaining unit member, a representative of the Association and the investigator. The bargaining unit member may decline attendance and/or respond to the Dean’s report in writing. At this conference both the investigator and the bargaining unit member shall be afforded the opportunity to make a statement. The Provost shall insure that both parties are fully heard.” You have the option of attending or declining the formal disciplinary conference.

Please provide Ms. Otworth with times that you and your SEA representative can meet and we’ll set up the conference accordingly.

Dr. Jeffrey A. Bauer
Provost and Vice President for Academic Affairs
Shawnee State University
Office: 740-351-3641
jbauer@shawnee.edu

From: Roberta Milliken
Sent: Tuesday, May 29, 2018 3:56 PM
To: Nicholas Meriwether <nmeriwether@shawnee.edu>; Eugene Burns <eburns@shawnee.edu>; Jeff Bauer <jbauer@shawnee.edu>
Subject: Report on Formal Investigation

Dear Dr. Meriwether,

Thank you for meeting with me on May 9th. As per Article 18, section 3D of the CBA, I am attaching a written report that includes my findings regarding the formal investigation. I have copied Dr. Burns and Provost Bauer as well. I have also sent a hard copy of this report to you via interoffice mail. Please let me know if you have any questions about it.

Regards,

Roberta

Roberta Milliken, Ph.D.

Acting Dean of the College of Arts and Sciences
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662
740.351.3550

From: Jeff Bauer

Sent: Thursday, June 14, 2018 10:51 PM

To: Nicholas Meriwether

Cc: Eugene Burns; Roberta Milliken; Michael McPhillips; Dave Zender

Subject: Disciplinary Action

Dear Dr. Meriwether,

My decision on formal disciplinary action is attached. You will receive a hard copy of the memo via campus mail.

Dr. Jeffrey A. Bauer

Provost and Vice President of Academic Affairs

Shawnee State University

jbauer@shawnee.edu



MEMORANDUM

TO: Dr. Nicholas Meriwether, Professor, Department of English & Humanities

FROM: Dr. Jeffrey A. Bauer, Provost *Jeffrey A. Bauer*

DATE: June 14, 2018

SUBJECT: Provost's Decision on Formal Disciplinary Action

This memo provides you with my decision on formal disciplinary action recommended by Dean Roberta Milliken following a Title IX investigation. Ms. Malonda Johnson, Director of Human Resources and Deputy Title IX Director, conducted an investigation into a student complaint that alleged discriminatory treatment in your class. The report on the investigation states your "disparate treatment" of the complainant in class is a violation of BOT Policy 5.01.

I reviewed the Title IX investigative report submitted by Ms. Johnson, the Dean's Findings submitted by Dean Milliken, and considered information that you provided to President Rick Kurtz and me in a letter dated March 12, 2018. In addition, I also reviewed information that you included in an e-mail sent to me on June 1, 2018.

BOT Policy 5.01 states that "Shawnee State is committed to having an educational and working environment for students ... that is without unlawful or prohibited discrimination and harassment". Despite your statement that you treated the complainant the same as all other students (June 1, 2018, e-mail), your actions demonstrate otherwise. In this case, you continued to address the complainant differently from other students based on a trait that is protected under our anti-discrimination policy even after being warned by Dean Milliken that this was a violation of policy.

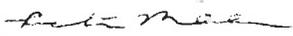
I approve Dean Milliken's recommendation of formal disciplinary action. I will ask Dean Milliken to provide me with a letter of warning that will be placed in your personnel file. When the warning letter is placed in your file, you will be sent a stamped copy of the document at the time of placement and will have the opportunity to add a written statement as an attachment to the document.



Memorandum

DATE: June 22, 2018

TO: Dr. Nicholas Meriwether

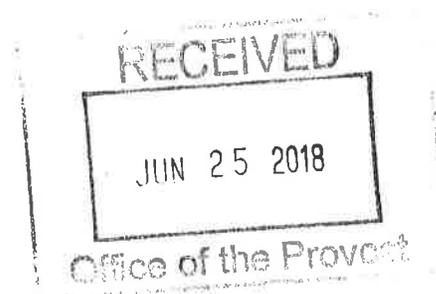
FROM: Dr. Roberta Milliken, Acting Dean, College of Arts and Sciences 

RE: Written Warning

CC: Dr. Jeff Bauer, Provost and Vice President of Academic Affairs
Dr. Eugene Burns, President, Shawnee Education Association
Personnel File

Per Article 18.2.C.1.a in the Collective Bargaining Agreement, I am providing you with this written warning and placing a copy in your personnel file. In his memorandum dated June 14, 2018, Provost Bauer approved this formal disciplinary action that comes as a result of a Title IX investigation and my findings regarding the violation of Shawnee State University's Policy 5:01.

As BOT Policy 5.01 makes clear, Shawnee State is dedicated to providing an educational environment that does not discriminate against any individual due to a variety of traits, including gender identity. Given that you persisted in treating the complainant differently than other students in your class throughout spring term because of her gender identity, you engaged in behavior that is prohibited by the university. I would therefore caution you against any such behaviors in the future to avoid further corrective actions.



From: Jeff Bauer
Sent: Monday, June 25, 2018 8:18 AM
To: Nicholas Meriwether
Cc: Roberta Milliken; Eugene Burns; Dave Zender; Michael McPhillips
Subject: Letter of Warning

Dr. Meriwether,

You received notification from me on June 15 that I accepted the recommendation of Dean Roberta Milliken for formal disciplinary action against you in the form of a written letter of warning. Dean Milliken has provided me with the letter of warning. This letter will be placed in your personnel file. As per Article 14, Section 5.A, of the Collective Bargaining Agreement, "The bargaining unit member shall be sent a stamped copy of the document at the time of placement and shall have opportunity to add his/her written statement as an attachment to any document in such file." A paper copy of the stamped letter will be delivered to your campus mailbox tomorrow (Tuesday, June 26). If you choose to attach a written statement to the letter, please send it to my office and it will be placed in your personnel file.

Dr. Jeffrey A. Bauer
Provost and Vice President for Academic Affairs
Shawnee State University
jbauer@shawnee.edu

From: Nicholas Meriwether
Sent: Monday, July 2, 2018 7:39 AM
To: Chip Poirot
Cc: Eugene Burns
Subject: Request for Grievance

Dear Chip,

As you will see from the attached document, I am asking you and the SEA to convene a Grievance Committee meeting to consider my request for a grievance in response to a recent disciplinary action against me by the Administration. The details are provided in the document.

Please let me know if you need additional information.

Regards,

-- Nick

Nicholas Meriwether, PhD
Professor of Philosophy

Dear Chip,

As you may know, on June 14, 2018, Provost Bauer approved Dean Milliken's recommendation of formal disciplinary action against me. Accordingly, a warning letter is now in my personnel file. All of this is based on the fact that I have continued to use the standard, biologically-based titles and pronouns for all of my students that have been commonplace in the English language for centuries.

I would like to file a level three grievance under Article 19, section 6 of the collective bargaining agreement, something that is countenanced in Article 18, section 4(E). Dr. Burns told me that to begin this process, I need to contact you so that you can convene the grievance committee.

As you convene this committee, here is a list of the provisions that I believe the administration has violated:

1. Article 7, Section 2(B)(1): This section notes that academic freedom protects my "[f]reedom in [my] classroom when discussing subject matter that is reasonably related to the relevant course material and established curriculum." A political philosophy course naturally covers controversial political subjects of the day, and issues related to transgenderism clearly qualify as such, yet the administration is punishing me for continuing to express my views on human nature in my classroom and to speak consistent with those views. Instead, it is insisting that I speak in a way that endorses a debatable and controversial position that my students know I do not believe. After all, I teach ethics, Christian theology, and political philosophy, where all of these topics naturally arise. So the administration is insisting that I speak in a way that would make me appear hypocritical, which would have a significant and deleterious effect on my teaching.
2. Article 7, Section 2(B)(2): This section notes that academic freedom protects my freedom to "[c]hoose . . . pedagogical techniques." Years of experience have demonstrated that referring to students by their last names and a title (*i.e.*, "Mr.," "Ms.," "Miss") fosters an atmosphere of seriousness and respect that is vital in classes that discuss some of the most controversial issues of the day. I have offered to accommodate individual students by dropping the use of titles for them upon request. But this has not satisfied the administration, who are now disciplining me for this pedagogical technique.
3. Article 7, Section 2(B)(4): This section notes that academic freedom protects my "[f]reedom to . . . speak freely . . . on educational and curricular matters and on matters of public concern." Few things could more clearly qualify as a matter of public concern than the issues surrounding the transgender debate. But because my speech reflects my belief that there are only two genders, that a person's gender is fixed from the moment of conception, and that it cannot be changed, the administration is subjecting me to discipline.
4. Article 7, Section C: While I do not believe that this section accurately summarizes how the First Amendment applies to professors, the administration's treatment of me still runs afoul of this provision. Dean Milliken's letter of warning is not limited to

- how I interact with students in class or on campus. Rather it restricts my speech even in my capacity as a private citizen outside the scope of my official duties.
5. Article 18, Section 1(B)(1)(b): This provision states that if a complaint involves alleged unlawful discrimination and harassment, the Dean “will direct the complaint to Human Resources.” The administration claims that I violated Policy 5.01REV, which prohibits various forms of discrimination, yet Dean Milliken’s own reports reflect that she never referred this matter to Human Resources.
 6. Article 18, Section 2(C)(3): This provision outlines the conditions that must be met before the administration can launch a formal investigation. Even though none of these conditions apply to me, the administration launched, conducted, and completed just such an investigation. Nothing I have done qualifies as “serious professional misconduct” under Article 7, and I have faithfully and competently discharged my professional duties. Referring to men as “Mr.” and “he” and referring to women as “Ms.” and “she” does not imperil anyone’s health or safety, does not constitute “harassment” or “discrimination” (let alone the “severe” harassment or discrimination required in this section), and does not impair my ability to fulfill my responsibilities to the University. Nor does it qualify as “[p]ersistent or malicious conduct” that obstructs instruction. This is especially true when I offered to accommodate the student in question (and others like him) by referring to him by his last name alone and when that student went on to complete my classes quite successfully. The administration has never identified what provisions of this section justified this investigation, but it proceeded against me nonetheless.
 7. Most fundamentally, the administration is disciplining me for alleged discrimination, demanding that I treat “all students the same.” But I have treated all my students the same by using biologically based titles and pronouns for them. In the spring of 2018, I adjusted this standard practice slightly, but this was to accommodate a student’s request. The administration should not be able to use the nondiscrimination policy to punish a professor who treats all students the same.

Thank you in advance for convening the grievance committee as soon as possible. As you can understand, I would like to complete this grievance process as quickly as possible so as to have clarity on what I can and cannot do before the fall semester begins. And I hope that my grievance can proceed as an SEA sanctioned grievance. Therefore, I will look forward to hearing from you soon.

Sincerely,

Nicholas K. Meriwether

Shawnee Education Association GRIEVANCE FORM

Grievance number (Association will supply this): Su 1801

Grievant(s) Name, Position, Department and College: Please Print or type:

Nicholas Meriwether, Professor, Department of English and Humanities, College of Arts and Sciences

Grievant's Signature: Association President or Association Rep signs here only if Association grievance:

Signature: Nicholas K. Meriwether

Association President or Association Representative Please Initial Appropriate Box

This grievance is:

- An Association grievance (The Association is the grievant)
- An individual, Association sanctioned grievance
- A non-sanctioned individual grievance
- A non-sanctioned grievance by two or more bargaining unit members

If the grievance is a non-sanctioned grievance, grievant please sign, date and attach the accompanying release form.

Date completed grievance form received by Association: (all individual grievances): 8/16/18

Association President or Association Representative Signature:

[Signature]

This grievance is commencing at (Association Rep. Check appropriate box)

Level 1 Level 2 X Level 3

Date Received in appropriate administrator's office: _____

If grievance commences at Level 2 or 3 attach documentation of mutual agreement.

RECEIVED
AUG 20 2018
Office of the Provost

cc: Grievant
Chair, SEA Grievance Committee
President, SEA

RECEIVED

SEP 14 2018

Statement of Grievance

Please provide a typed description of the incident (s) or issue(s) which are being grieved. Attach a separate page if more space is needed. If additional documentation is submitted, please attach at the end as well.

See attached

Section(s) of Agreement claimed to have been violated (if more than one, list all that are relevant):

See attached.

Relief Requested:

See Attached

cc: Grievant
Chair, SEA Grievance Committee
President, SEA

Su 1801: Statement of Grievance

Description

On June 22, 2018, Dr. Roberta Milliken, Dean, College of Arts and Sciences, sent notice to Dr. Meriwether, Professor, College of Arts and Sciences, that she was entering a written warning regarding violation of Board Policy 5.01. This action came after the conclusion of the disciplinary process as stated in Article 18 of the University's Collective Bargaining Agreement with the Shawnee Education Association. However, in undertaking this action, the University did not show cause to engage in the discipline. In addition, the process did not take account of Professor Meriwether's defense that his conduct was protected by academic freedom and by his freedoms under the First Amendment. Nor did it address Professor Meriwether's assertion that his conduct was also protected by religious freedom.

The above matter arose due to the request of a student in Dr. Meriwether's class to be addressed as **female rather than male** (*i.e.*, as "Ms." instead of "Mr.," as "she" instead of "he"). The student **self-identifies as a male-to-female transgender** person. Dr. Milliken asserts that Professor Meriwether's refusal to refer to the student as female in class created a hostile environment for the student on the basis of the student's gender expression. In an initial conversation with the student regarding the matter, Dr. Meriwether asserts that the student approached him in an aggressive, confrontational, and physically threatening fashion, that the student insisted on being referred to as female in class, and that the student was verbally abusive by asking Dr. Meriwether how he would feel if the student called him a "cunt" and by threatening to have Dr. Meriwether fired if he did not comply with these demands. Feeling threatened by these actions and fearing for the safety of himself and his class, Dr. Meriwether reported the matter to the Dean of Students, Marcie Simms. The student also filed a complaint with Douglas Shoemaker, the University's Title IX coordinator alleging discriminatory treatment by Dr. Meriwether. Dr. Milliken attempted to resolve the matter informally with Dr. Meriwether. Dr. Meriwether offered to refer to use the student's name (either first or last, whichever the student preferred) and avoid the use of titles and pronouns. Dr. Milliken rejected this resolution and informed Dr. Meriwether in writing that his failure to address the student as a female (and all students by their preferred gender identity) or to eliminate all gender references when interacting with students could result in disciplinary actions. Subsequently, the student alleged further discriminatory conduct by Dr. Meriwether due to Dr. Meriwether's use of the pronoun "he" in reference to the student. Dr. Meriwether explained this was **inadvertent** since he attempted to refer to the student by name only. The matter was referred to the University's Human Resources Department for investigation. Malonda Johnson, the University's Human Resources Director conducted an investigation. Upon the conclusion of the investigation, Dr. Milliken brought a formal charge against Dr. Meriwether based on the findings of the investigation report and subsequently found him to be responsible for violating University Policy 5.01. The Provost upheld Dr. Milliken's decision.

Enclosed with this grievance is the relevant documentation: (1) Dean Milliken's May 29, 2018 report (and supporting documents); (2) Dr. Meriwether's June 1, 2018 e-mail to Provost Bauer regarding Dean Milliken's report; (3) Provost Bauer's June 14, 2018 decision; (4) Dean Milliken's June 22, 2018 warning letter.

Articles of the Agreement Alleged to have been violated

Article 1.4, Article 7.1 and 7.2, and Article 18. If additional articles are found to have been violated or to be of relevance during this process the grievant and the Association assert the right to raise those articles in any proceedings related to this grievance.

Relief Requested

The University will vacate the discipline against Dr. Meriwether. In future cases where University Policies and religiously or philosophically based beliefs are in potential conflict, especially when those matters are areas of public controversy and/or academic debate, the University will find a reasonable accommodation with Dr. Meriwether and/or other bargaining unit members whose beliefs are impacted by the policy.

Grievance Su 1801 is in response to a formal disciplinary action in the form of a written warning against a bargaining unit member, Nicholas Meriwether, Department of English and Humanities. The discipline was enacted after Professor Meriwether declined to refer to a self-identified male-to-female transgender student as female. The University views Dr. Meriwether's conduct as discriminatory with respect to the student's gender expression by virtue of creating a hostile environment for the student, which is a protected category under the relevant University policy. The "statement of grievance" contains a longer summary of the record.

The grievance alleges that the University did not show cause to discipline Dr. Meriwether (it did not prove actual discrimination occurred and there were biases in the investigation process), that Dr. Meriwether's reluctance to use "Ms. " to refer to a student who was born biologically male is protected under academic freedom, religious freedom, and the First Amendment. All are addressed by the CBA. The grievance has been sanctioned by the SEA grievance committee.

At my request, the University agreed to hold the Level 2 meeting over the summer, though it is not obligated to do so. Accordingly, a Level 2 meeting was held in the Provost's office on 8/22/2018 at 12 p.m.

Present at the meeting: myself (Chip Poirot, SEA Grievance Committee Chair), Nicholas Meriwether, and Provost, Dr. Jeff Bauer.

The meeting began with the Provost summarizing the purpose of the meeting.

Before I could present the grievance, the Provost began to question Nicholas Meriwether. The questions were worded in such a way as to induce Professor Meriwether to admit responsibility for violating University policy.

I cut in and said that this was not an appropriate time to ask questions of Nicholas Meriwether and that the record of what he did and did not say in class was clearly established.

I said I wanted to present the grievance and I began to present the grievance. I started with a discussion of what I viewed as flaws in the investigation. The Provost interrupted me. I attempted to discuss the academic freedom and religious discrimination aspects. The Provost did not want to hear it and made it clear by interrupting me. I discussed how the issue of transgenderism is controversial in society and is therefore a matter of some controversy. I referenced the teachings of Professor Meriwether's church, the Presbyterian Church of America. I discussed that in Nicholas' Meriwether's view, he was being compelled to affirm a position that neither he nor his denomination believes. At one point the Provost openly laughed at the presentation.

The Provost characterized the grievance as "having failed to present cause". I corrected him and indicated that the grievance was that the University did not "show cause". The Provost referred to the grievance and noted that the grievance did in fact say "show cause" (which is the requirement per the CBA). I talked about whether or not discrimination had in fact occurred and questioned if the student's education opportunities had actually been denied in any substantive form. We also talked about the student's conduct.

At one point during this discussion the Provost again attempted to question Nick before I had even finished presenting. I said "Nick is not going to speak during this meeting. I will be speaking for him". On the whole, the Provost would not let me present the grievance.

There was some discussion between the Provost and Nick in which the Provost appeared to be asking Nick if he had decided to deliberately try to go to Court on this case. Nick did not really give an answer to this. We talked a little bit about the meaning of discrimination and hostile environment. I asked why Nick could not put a disclaimer in his syllabus and then use the titles and pronouns based on the student's gender identity. We talked about how sometimes people may need to make adjustments in teaching style.

The meeting ended about half an hour and I was not able to present the grievance. After the meeting, Nick reminded me that he had mentioned adding a disclaimer to his syllabus during his discussions with Dean Milliken in order to see what the administration would permit, not because this would adequately accommodate his religious convictions or respect his academic freedom or First Amendment rights. Even with this disclaimer, he would still be forced to affirm something that he does not believe to be true and that contradicts his sincerely held religious beliefs.

From: Jeff Bauer
Sent: Wednesday, September 5, 2018 10:55 PM
To: Nicholas Meriwether; Chip Poirot
Cc: Pamela Otworth; Michael McPhillips; Dave Zender; Eugene Burns
Subject: Level 2 Grievance SU 1801

Dr. Meriwether,

I am denying your grievance at Level 2. Decision and rationale are attached. Article 19, Section 6A, states that "The Association or grievant may request a Level Three meeting with the President by forwarding the grievance form within fifteen (15) working days of the Provost's response." The grievance form will be made available on the desk of my Executive Assistant, Ms. Pam Otworth, if you choose to request a Level 3 meeting.

Dr. Jeffrey A. Bauer
Provost and Vice President of Academic Affairs
Shawnee State University
Office: 740-351-3641
jbauer@shawnee.edu

Provost's Decision Level 2 Grievance

GRIEVANCE SU 1801 FORMAL DISCIPLINE – DR. NICHOLAS MERIWETHER

On August 22, 2018, representatives of the Shawnee Education Association (SEA) and Shawnee State University met to address a Level 2 Grievance SU 1801 - an individual, Association-sanctioned grievance filed by Dr. Nicholas Meriwether. Dr. Meriwether, Dr. Chip Poirot (SEA Representative), and Provost Jeff Bauer were in attendance.

On June 14, 2018, Dr. Meriwether was formally disciplined. The discipline stemmed from a complaint by a student who has transitioned or is transitioning from male to female, and who was enrolled in Dr. Meriwether's Political Philosophy class during Spring Semester 2018. The complaint alleged that Dr. Meriwether addressed the student in a manner different than other students in the class, in a way that that was offensive to her, and in violation of Board of Trustee Policy 5.01 (BOT 5.01), Non-discrimination/Sexual Harassment Policy. Dean Roberta Milliken attempted to informally resolve the student's concern and provided Dr. Meriwether with options that would allow him to avoid differential treatment of the student. Dr. Meriwether chose to continue the differential treatment and, following a formal investigation, was found to be in violation of BOT 5.01. For this, Dr. Meriwether received a letter of warning which was placed in his personnel file.

The grievance alleges that the University did not demonstrate cause and violated Dr. Meriwether's academic freedom, religious freedom, and first amendment rights. In particular, the grievance claims that the disciplinary process "did not take account of Professor Meriwether's defense that his conduct was protected by academic freedom and by his freedoms under the First Amendment. Nor did it address Professor Meriwether's assertion that his conduct was also protected by religious freedom."

Concerning the first part of the grievance alleging that the University did not demonstrate cause, it seems clear that by Dr. Meriwether's own admission, he continued to address the student in a way that singled her out based on her gender identity. This differential treatment is a form of discrimination prohibited by BOT 5.01. Even after he was given options to avoid the differential treatment of the student, Dr. Meriwether elected to continue this treatment. Repeated and willful violation of BOT policy is strong evidence for just cause as per Article 18 of the Collective Bargaining Agreement (CBA).

The grievance claims that Dr. Meriwether's conduct is protected by academic freedom, the First Amendment, and religious freedom. Do these freedoms supersede the rights of an individual, a student in this case, against discrimination by a public employee at a state-supported institution? When provided with options to avoid discrimination and opposition to his religious beliefs, Dr. Meriwether chose to continue his disparate treatment of the student. During the grievance meeting, Dr. Meriwether asserted that addressing students in way that would avoid differential treatment would have gone against his pedagogy for this class; however, neither academic freedom nor the First Amendment can be used to excuse discriminatory treatment of a student based on membership in a protected class.

In conclusion, the complaint/formal discipline procedures described in the CBA were followed. Cause was demonstrated.

Grievance denied.

From: Chip Poirot <cspoirot@yahoo.com>
Subject: Level III meeting
Date: September 17, 2018 at 8:17:41 AM EDT
To: Nicholas Meriwether <meriwether5@mac.com>

Below is a summary of the Level III meeting. Let me know if you have additions or corrections.

We held the Level III grievance meeting for Nicholas' Meriwether on Friday, Sept 14, 2018.

The grievance was heard by David Zender (Labor Relations Director) and Michael McPhillips (University General Counsel) acting as representatives for the President.

I was present as the Union Rep for Nicholas, and he was present as well.

I started the meeting by asking if David and Michael were aware of the background and had the records of the disciplinary proceeding.. Based on their comments and demeanor, it seemed pretty clear that they had heard very little about the case and they did not have any records of the matter.

I provided them with the compiled records of the disciplinary proceeding. I also provided them with the grievance form signed by Nicholas rejecting the Provost's decision at Level II.

One point that should be noted is my observation and impression of the overall demeanor and response of David Zender and Michael McPhillips to the grievance. They were not dismissive and in fact, my impression was that they were taking it very seriously. At one point during the meeting David Zender characterized the grievance as "not frivolous" and acknowledged there were some issues that needed to be addressed.

Before I began I raised the issue of how or whether acting President Jeff Bauer would be able to impartially review the matter as he had already rejected the grievance.

I presented the grievance and focused on three issues:

1. The nature of the investigation: I focused on two points; bias in the informal procedure preceding the investigation, bias in the investigation as evidenced by their decision to only focus on witnesses who provided negative information, the attitude of the investigators and the Dean towards Nicholas as evidenced by statements in the report, an unwillingness to hear or listen to Nicholas' side of the issue, misrepresentations of Nicholas' statements in the investigator's report, and the lack of any actual witness statements. The second point I focused on was the interpretation and application of the policy. I argued that when the interaction between Nick and the student was considered as a whole, there was not sufficient evidence to prove that gender based harassment occurred or that the student was denied anything. During my presentation David and Michael asked a few questions for clarification.
2. The second issue I focused on was the Level II meeting with Provost Jeff Bauer. I noted that during that meeting he had prevented me from presenting the grievance, had asked Nicholas "have you stopped beating your wife yet" types of questions, and that his response did not really address the nature of the grievance and instead, relied on asking a series of rhetorical questions that in fact I had not argued.
3. We then focused more generally on the issues of academic freedom and religious discrimination. We discussed the recent Masterpiece Cake decision and Justice Kennedy's arguments in the case. At one point Michael asked a very legitimate question about whether or not the same behavior (refusing to address African American students in the same way as White students) would constitute discrimination. We had some discussion about whether or not the example held and some general discussion about the abruptness with which transgenderism had become an issue in society.

During this discussion I stressed that while I was arguing that some accomodation could be reached with Nick, that I agreed that transgender students should be protected from discrimination and that they should be treated with courtesy and respect.

The meeting ended with me thanking David and Michael for actually listening to the grievance.

Shawnee Education Association GRIEVANCE FORM

Grievance number (Association will supply this): Su 1801

Grievant(s) Name, Position, Department and College: Please Print or type:

Nicholas Meriwether, Professor, Department of English and Humanities, College of Arts and Sciences

Grievant's Signature: Association President or Association Rep signs here only if Association grievance:

Signature: Nicholas K. Meriwether

Association President or Association Representative Please Initial Appropriate Box

This grievance is:

- An Association grievance (The Association is the grievant)
- An individual, Association sanctioned grievance
- A non-sanctioned individual grievance
- A non-sanctioned grievance by two or more bargaining unit members

If the grievance is a non-sanctioned grievance, grievant please sign, date and attach the accompanying release form.

Date completed grievance form received by Association: (all individual grievances): 8/16/18

Association President or Association Representative Signature:

[Signature]

This grievance is commencing at (Association Rep. Check appropriate box)

Level 1 Level 2 Level 3

Date Received in appropriate administrator's office: _____

If grievance commences at Level 2 or 3 attach documentation of mutual agreement.

RECEIVED
AUG 20 2018
Office of the Provost

cc: Grievant
Chair, SEA Grievance Committee
President, SEA

RECEIVED
SEP 14 2018

Statement of Grievance

Please provide a typed description of the incident (s) or issue(s) which are being grieved. Attach a separate page if more space is needed. If additional documentation is submitted, please attach at the end as well.

See attached

Section(s) of Agreement claimed to have been violated (if more than one, list all that are relevant):

See attached.

Relief Requested:

See Attached

cc: Grievant
Chair, SEA Grievance Committee
President, SEA

Response to Level 1 Disposition

The Dean has authority to resolve the grievance.

The Dean lacks authority to resolve the grievance; the grievance is automatically forwarded to the Provost and will commence at Level 2. The grievant and Association will be notified of this action.

Level 1 Meeting Date: _____

Dean's Response: (Please attach additional, typed pages and supporting documentation if necessary, sign, date and clearly label as Dean's response):

Dean (or his/her Designee): _____ **Date:** _____

Grievant's Response to Level 1

I accept the Dean's disposition of the grievance (attach explanation if desired after Dean's response and please sign, date and label):

Signature _____ Date _____

I do not accept the Dean's disposition of the grievance (attach explanation if desired after Dean's response and please sign, date and label):

Signature _____ Date _____

cc: Grievant
Chair, SEA Grievance Committee
President, SEA

Level 2 Disposition

Date received in Provost's office: 8/23/18

The Provost lacks authority to resolve the grievance; the grievance is forwarded to the President and will commence at Level 3 (the grievant will be notified of this action).

The Provost has authority to resolve the grievance

Level 2 Meeting Date: 8/22/18

Provost's Response: (Please attach additional, typed pages and supporting documentation if necessary, sign, date and clearly label as Dean's response):

Attached

Provost (or his/her Designee): *Jeffrey A. Green* Date: 9/6/18

Grievant's Response to Level 2

I accept the Provost's disposition of the grievance (attach explanation if desired after Provost's response and please sign, date and label):

Signature _____ Date _____

I do not accept the Provost's disposition of the grievance (attach explanation if desired after Provost's response and please sign, date and label):

Signature *Nicholas K. Moriwether* Date 9/6/18

cc: Grievant
Chair, SEA Grievance Committee
President, SEA

Level 3 Disposition

Date received in President's office: 9/14/18

Level 3 Meeting Date:

University President's (or designee) Response: (Please attach additional, typed pages and supporting documentation if necessary, sign, date and clearly label as President's response):

see attached

University President (or his/her Designee): David Zander Date: 10/4/18
Director of Labor and Organizational Development

Grievant's Response to Level 3 (sign and date):

I accept the President's disposition of the grievance (attach explanation if desired after Dean's response and please sign, date and label):

Signature _____ Date _____

I do not accept the President's disposition of the grievance (attach explanation if desired after Dean's response and please sign, date and label):

Signature _____ Date _____

cc: Grievant
Chair, SEA Grievance Committee
President, SEA

Level 4: Arbitration

Executive Committee Action

_____ The Executive Committee approves submitting this matter to binding arbitration (Append copy of arbitration demand to this form).

_____ The Executive Committee does not approve submitting this matter to binding arbitration (attach explanation where appropriate).

SEA President Signature: _____

Date: _____

Date (s) of Arbitration where relevant: _____

Arbitrator's Award (attach copy)

cc: Grievant
Chair, SEA Grievance Committee
President, SEA

Su 1801: Statement of Grievance

Description

On June 22, 2018, Dr. Roberta Milliken, Dean, College of Arts and Sciences, sent notice to Dr. Meriwether, Professor, College of Arts and Sciences, that she was entering a written warning regarding violation of Board Policy 5.01. This action came after the conclusion of the disciplinary process as stated in Article 18 of the University's Collective Bargaining Agreement with the Shawnee Education Association. However, in undertaking this action, the University did not show cause to engage in the discipline. In addition, the process did not take account of Professor Meriwether's defense that his conduct was protected by academic freedom and by his freedoms under the First Amendment. Nor did it address Professor Meriwether's assertion that his conduct was also protected by religious freedom.

The above matter arose due to the request of a student in Dr. Meriwether's class to be addressed as **female rather than male** (*i.e.*, as "Ms." instead of "Mr.," as "she" instead of "he"). The student **self-identifies as a male-to-female transgender** person. Dr. Milliken asserts that Professor Meriwether's refusal to refer to the student as female in class created a hostile environment for the student on the basis of the student's gender expression. In an initial conversation with the student regarding the matter, Dr. Meriwether asserts that the student approached him in an aggressive, confrontational, and physically threatening fashion, that the student insisted on being referred to as female in class, and that the student was verbally abusive by asking Dr. Meriwether how he would feel if the student called him a "cunt" and by threatening to have Dr. Meriwether fired if he did not comply with these demands. Feeling threatened by these actions and fearing for the safety of himself and his class, Dr. Meriwether reported the matter to the Dean of Students, Marcie Simms. The student also filed a complaint with Douglas Shoemaker, the University's Title IX coordinator alleging discriminatory treatment by Dr. Meriwether. Dr. Milliken attempted to resolve the matter informally with Dr. Meriwether. Dr. Meriwether offered to refer to use the student's name (either first or last, whichever the student preferred) and avoid the use of titles and pronouns. Dr. Milliken rejected this resolution and informed Dr. Meriwether in writing that his failure to address the student as a female (and all students by their preferred gender identity) or to eliminate all gender references when interacting with students could result in disciplinary actions. Subsequently, the student alleged further discriminatory conduct by Dr. Meriwether due to Dr. Meriwether's use of the pronoun "he" in reference to the student. Dr. Meriwether explained this was **inadvertent** since he attempted to refer to the student by name only. The matter was referred to the University's Human Resources Department for investigation. Malonda Johnson, the University's Human Resources Director conducted an investigation. Upon the conclusion of the investigation, Dr. Milliken brought a formal charge against Dr. Meriwether based on the findings of the investigation report and subsequently found him to be responsible for violating University Policy 5.01. The Provost upheld Dr. Milliken's decision.

Enclosed with this grievance is the relevant documentation: (1) Dean Milliken's May 29, 2018 report (and supporting documents); (2) Dr. Meriwether's June 1, 2018 e-mail to Provost Bauer regarding Dean Milliken's report; (3) Provost Bauer's June 14, 2018 decision; (4) Dean Milliken's June 22, 2018 warning letter.

Articles of the Agreement Alleged to have been violated

Article 1.4, Article 7.1 and 7.2, and Article 18. If additional articles are found to have been violated or to be of relevance during this process the grievant and the Association assert the right to raise those articles in any proceedings related to this grievance.

Relief Requested

The University will vacate the discipline against Dr. Meriwether. In future cases where University Policies and religiously or philosophically based beliefs are in potential conflict, especially when those matters are areas of public controversy and/or academic debate, the University will find a reasonable accommodation with Dr. Meriwether and/or other bargaining unit members whose beliefs are impacted by the policy.

Dave Zender

From: Jeff Bauer
Sent: Thursday, September 06, 2018 6:55 AM
To: Nicholas Meriwether; Chip Poirot
Cc: Pamela Otworth; Michael McPhillips; Dave Zender; Eugene Burns
Subject: Level 2 Grievance SU 1801
Attachments: Provost's Decision SU 1801 Meriwether.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Dr. Meriwether,

I am denying your grievance at Level 2. Decision and rationale are attached. Article 19, Section 6A, states that "The Association or grievant may request a Level Three meeting with the President by forwarding the grievance form within fifteen (15) working days of the Provost's response." The grievance form will be made available on the desk of my Executive Assistant, Ms. Pam Otworth, if you choose to request a Level 3 meeting.

Dr. Jeffrey A. Bauer
Provost and Vice President of Academic Affairs
Shawnee State University
Office: 740-351-3641
jbauer@shawnee.edu

Provost's Decision Level 2 Grievance

GRIEVANCE SU 1801 FORMAL DISCIPLINE – DR. NICHOLAS MERIWETHER



October 4, 2018

President's Level Three Response to SEA Grievance SU: 1801

To: Eugene Burns, SEA President
Clifford Poirot, SEA Grievance Chair
Nicholas Meriwether, Professor, English & Humanities Department

Prior to my appointment as Interim President on September 14, 2018, I heard SEA Grievance No. SU 1801 at Level Two in my former role as Provost. The previous President designated Director of Labor and Organizational Development Dave Zender as his designee for Level Three. Mr. Zender conducted the Level Three meeting and made independent findings, as set forth in the attached decision. Pursuant to CBA Article 19.6.B, I adopt the attached decision and deny the grievance.

A handwritten signature in blue ink that reads 'Jeffrey A. Bauer'.

Jeffrey A. Bauer, Ph.D.
Interim President



October 2, 2018

The grievant, Dr. Nicholas Meriwether, a Professor in the English and Humanities Department, filed this individual, Association-sanctioned grievance over a written warning that was issued by Dean Roberta Milliken on June 22, 2018. The warning resulted from a Title IX investigation and finding that Meriwether violated Shawnee State University Policy 5.01. The grievant alleges that SSU violated the following provisions of the 2015-2018 Collective Bargaining Agreement: Article 1.4 (Non-Discrimination); Article 7.1 (addressing academic freedom); and Article 7.2 (Academic Freedom and First Amendment Rights). He asks that the University vacate his discipline, and reasonably accommodate future cases in which faculty members' religious beliefs conflict with policy.

The grievance was initiated at level Two, where it was heard by then-Provost Jeff Bauer. Dr. Bauer was appointed Interim University President on September 14, 2018, and designated the undersigned to preside over the Level Three meeting.

The Level Three meeting was held on September 14, 2018. The grievant, Professor Nicholas Meriwether, was present, as was Shawnee Education Association (SEA) Grievance Chair Clifford Poirot. Present on behalf of Shawnee State University were General Counsel Michael McPhillips, and myself.

The grievance challenges discipline that was imposed upon Dr. Meriwether due to his alleged differential treatment of a transgender student, who identifies as a female, in a Political Philosophy class. Dr. Meriwether explained that the issue first arose in or around January 2018, when he identified a student in the class as "Mr." Dr. Meriwether explained that in class discussions, he often formally addresses students as Mr. _____ or Ms. _____. After class, the student, according to Meriwether, aggressively approached him, explained that she identified as female, and threatened to have him fired. Meriwether stated that on this occasion, he was unaware that the student identified as a female.

Significantly, Dr. Meriwether acknowledges that in late January or early February 2018, his supervisor, Dean Milliken, informed him that he would need to either address the student by her preferred gender (i.e., Miss or Ms.), or drop all references to gender in the way he addressed students in the class. Dr. Meriwether explained that he has a sincerely held religious belief that God created two genders, male and female, and that individuals cannot change what God created. At one point during the proceedings, he proposed stating his position regarding transgender issues in his course syllabi, and indicated that under those conditions, he would refer to the complaining student as a female in class.

At the Level Three meeting, Dr. Meriwether acknowledged the truth of this entry, dated 2/12/2018, in Appendix A that he produced at the hearing: "Meriwether told [Dean Milliken] that he would send an email with a compromise, explaining that he would call [the student] by "his" legal name [student's first or last name] . . . Milliken asked if it would be addressing the other students in the class the same way, and he said not, that he would continue to use Mr. Surname and Ms. Surname for the others." When Meriwether continued his differential treatment of the student, she complained again, and an investigation led to the written warning that is being challenged.

The SEA argued that the student was not subjected to discrimination by Dr. Meriwether because she was not denied access to any benefits of the class, did not receive a lower grade on behalf of her transgender status, and did not suffer any other concrete harm. The union further argued that Dr. Meriwether's conduct did not rise to the level of severe, pervasive discrimination as defined in hostile

environment situations. Further, the SEA argued that Meriwether's speech and conduct were protected by the First Amendment and the principle of academic freedom, noting that his practice of formally addressing students as "Mr." and "Miss/Ms." is a legitimate pedagogical tool. The SEA representative pointed out that the union was not asking SSU to ignore transgenderism, but asked that the University address the issue in way that everyone could feel comfortable.

First, the union is correct that Dr. Meriwether's conduct was not so severe and pervasive that it created a hostile educational environment. But this is not a hostile environment case; the warning was grounded on differential treatment based on transgender status. It is worth noting that Dr. Meriwether pointed out that in the initial classroom encounter discussed above, he was unaware that the student identified as a female. He also credibly stated that on a different occasion, in the course of a classroom discussion, he mistakenly referred to the student by her non-preferred gender identifier. The written warning issued to Dr. Meriwether is not based upon these excusable, innocent mistakes, which were not a violation of policy.

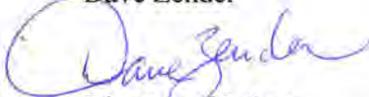
Notably, however, Meriwether acknowledged that he refused to stop singling out the student because of her gender identity after receiving notice of the policy's requirements and options to accommodate his religious beliefs. The University espouses principles of non-discrimination. Board of Trustees Policy No. 5.01 prohibits discrimination based on race, color, genetic information, religion, age disability, national origin, ancestry, sex, pregnancy, sexual orientation, gender identity, veteran status and military status. Procedure No. 5.01:2, which derives from Policy No. 5.01, provides in Section 18.3 that, "Negative or adverse treatment based on . . . gender identity . . . denies or limits the individual's ability to obtain the benefits of Shawnee State's programs or activities." Meriwether's differential treatment of the student was a violation of SSU's anti-discrimination policy.

By way of explanation, it is conceivable that SSU employs or may in the future employ faculty members with sincerely held religious beliefs that, e.g., one national origin is superior to another national origin, or one sex is inferior to the other sex. The University's non-discrimination policy does not require such individuals to change their sincerely held beliefs or adopt different beliefs. The policy does require that employees, including faculty members, not single out in a negative way individuals whose traits they hold in lower regard because of religious beliefs. For the same reason, Dr. Meriwether's suggestion of a disclaimer on his syllabus would not cure the problem. SSU would not permit the hypothetical faculty member discussed above to include language on their syllabus explaining why their religious beliefs hold men in greater esteem than women, even if the disclaimer provided that women would be treated with respect nonetheless. Similarly, the proposed disclaimer by Dr. Meriwether would not promote equal opportunity in the classroom.

Dr. Meriwether was not required to espouse a belief with which he disagreed. He was not forced to give up a pedagogical tool; in fact, Dean Milliken provided alternatives to the use of his pedagogical tool that would be consistent with Policy 5.01, but Meriwether rejected them.

For these reasons, no violation of Article 1.4, 7.1 or 7.2 is found and the grievance is denied.

Dave Zender



Director of Labor

SEA Grievance SU 1801 Records



To: Dr. Nicholas Meriwether
Provost Jeff Bauer
Dr. Eugene Burns

From: Dr. Roberta Milliken *R.M.*

Subject: Report of Dean's Findings regarding the Formal Investigation of Dr. Nicholas Meriwether

Date: May 29, 2018

On Thursday, January 11, 2018 Mr. Douglas Shoemaker, Title IX Coordinator, was notified about a complaint received from Ms. [REDACTED], a student at SSU, regarding her treatment in Dr. Meriwether's Political Philosophy class. The complainant had asked Dr. Meriwether to address her as he does other female students in his class, and Dr. Meriwether had resisted doing so. Mr. Shoemaker assessed the complaint and determined that it could be informally resolved. The complainant agreed. I, the Dean of the College of Arts and Sciences, then met with Dr. Meriwether on three separate occasions in attempts to informally resolve the complaint: around January 12, on January 25, and on February 12. None of the three attempts were successful, as Dr. Meriwether continued to refer to Ms. [REDACTED] differently than other students in the class.

On February 13, 2018, I sent Dr. Meriwether a written request that he adhere to Policy No. 5.01REV and treat Ms. [REDACTED] as he does other students in his class (See attachment A). On February 15, 2018, I received another complaint from Ms. [REDACTED] about how Dr. Meriwether continued to treat her differently than other students in class, and on February 16, 2018, I sent Dr. Meriwether a formal investigation notice (See attachment B). On March 12, Dr. Meriwether sent Provost Bauer and President Kurtz a request to suspend the formal investigation (See attachment C).

The case was assigned to Ms. Malonda Johnson, Deputy Title IX Coordinator, on February 16, 2018 who, with the note-taking assistance of Ms. Kara Arms, Human Resources Administrator, completed the investigation. Ms. Johnson interviewed Ms. [REDACTED] Dr. Meriwether, and two other witnesses. Because I was involved in the informal resolution attempts, I was also interviewed. At the conclusion of the investigation, Ms. Johnson completed a Title IX Investigative Report (See attachment D) dated April 17 in which she indicates that Dr. Meriwether's refusal to recognize the complainant's gender identity and his continued disparate treatment of her in his class created a hostile environment for the complainant.

After considering the report filed by Ms. Johnson, I determined that a charge was warranted and thus contacted Dr. Meriwether and the SEA on April 19 to set up a Dean's Conference pursuant to Article 18, section 3.C (See attachment E). The meeting was set for Friday, April 27. On Saturday, April 21, Dr. Meriwether requested that he receive a copy of the Appendix

A mentioned in the Title IX Investigative Report and that his email correspondence with me as well as Provost Bauer and President Kurtz be included in the report. Mr. Shoemaker acknowledged receipt of this request on April 23 and sent the requested information to Dr. Meriwether on April 27, 2018. Additionally, Mr. Shoemaker indicated that he would incorporate the correspondence Dr. Meriwether requested be added to the report as Appendix D. At the Dean's Conference scheduled for that day (April 27th) I presented Dr. Meriwether and Dr. Eugene Burns, the SEA representative, with copies of the Title IX Report and copies of the Board Policy 5.01REV: Nondiscrimination/Sexual Harassment Policy. Dr. Meriwether then requested a postponement of the Dean's Conference so that he could review the information recently supplied to him by Mr. Shoemaker. We agreed to meet again on May 9, 2018.

On Tuesday, May 8, 2018, I received an email from Dr. Meriwether titled Response to Appendix A (See attachment F). On May 9, 2018, we again met for the Dean's Conference. I asked if Dr. Meriwether and Dr. Burns needed copies of the documents, the Title IX Report and Board Policy 5.01REV, that I shared with them on April 27, 2018. Both indicated that they had copies of the documents. I reviewed the charge, the information provided in the report, and summarized the timeline of events related to the complaint. Once I finished, I asked Dr. Meriwether if he wanted to respond. He indicated that he already had in his email dated May 8, 2018 and that he had nothing else to add at that time.

At the conclusion of the conference, I indicated that everyone who is part of the university community is expected to adhere to the set policies and procedures of SSU, as these are established to communicate basic expectations of its employees and students. Because Dr. Meriwether repeatedly refused to change the way he addressed Ms. [REDACTED] in his class due to his views on transgender people, and because the way he treated Ms. [REDACTED] was deliberately different than the way he treated others in the class, I found that he effectively created a hostile environment for Ms. [REDACTED]. This is a direct violation of Policy No. 5.01REV. Therefore, in order to ensure a safe educational experience for all students, I proposed the formal action of a written warning being placed in Dr. Meriwether's personnel file.



February 13, 2018

Nicholas Meriwether, PhD
Professor, Department of Philosophy
MAS 407
Shawnee State University

BY INTEROFFICE MAIL

Dear Dr. Meriwether,

I have spoken with you several times, mostly recently on January 25 and February 13, regarding the informal complaint of a student in your Political Philosophy class that you did not address her as "Ms. _____" or "Miss _____," as you acknowledge you address other female members of the class, while you address male students as "Mr. _____." The complaint alleged that the student informed you that she identifies as a female. It was alleged that upon being notified of this, you began calling this particular student only by her surname, unlike the way you address other students, i.e., without preceding it with "Mr.," "Miss," or "Ms." and that last Tuesday you referred to the student as "he" in your class. The student has notified the Dean of Students that you have continued to ignore or reject her requests that you treat her the same as other students who identify themselves as female.

Policy No. 5.01REV, promulgated by the Shawnee State University Board of Trustees, has among its purposes the creation of an educational environment that prohibits discrimination on the basis of "race, color, genetic information, religion, age, disability, national origin, ancestry, sex, pregnancy, sexual orientation, gender identity, veteran status or military status." This letter is not a notification that you are being investigated for a policy violation. Rather, it is a formal notice that are expected to comply with Policy No. 5.01REV by treating all students the same, irrespective of their gender identity. Should there be future complaints of disparate treatment in violation of this policy, whether involving the student referred to above or not, the University may conduct an investigation in accordance with University policies and the faculty collective bargaining agreement. If such an investigation substantiates a complaint, you could be subject to informal or formal disciplinary action.

I look forward to your cooperation in this matter.

Regards,

A handwritten signature in cursive script, appearing to read 'Roberta Milliken'.

Roberta Milliken, Ph.D.
Acting Dean, College of Arts and Sciences

Roberta Milliken

From: Roberta Milliken
Sent: Friday, February 16, 2018 3:40 PM
To: Nicholas Meriwether
Cc: Eugene Burns (eburns@shawnee.edu); Malonda Johnson (mjohnson@shawnee.edu); Douglas Shoemaker
Subject: notification of investigation

Dear Nick,

This is to inform you that after receiving another complaint from a student in your Political Philosophy class, I am initiating a formal investigation as per Article 18 in the Collective Bargaining Agreement. Because the matter involves a potential violation of University Policy 5.01REV that addresses unlawful discrimination and harassment, I am also directing this complaint to the Director of Human Resources, Malonda Johnson, and the Title IX Coordinator, Douglas Shoemaker. This action is due to the allegation that you continue to address this student differently than others within the class by calling her by her surname while other students are addressed as Ms. ____ or Mr. _____. Additionally, the student alleges that a male pronoun was used in reference to her in class on February 15th. I anticipate that you will be contacted by Ms. Johnson and/or Mr. Shoemaker shortly. In the meantime, you have the right to consult with a representative of the SEA and/or OEA, and the right to request the presence of a representative of the SEA or OEA at any meeting with the investigating officer. If you have any questions about the process, please see Article 18 in the CBA.

Regards,

Roberta

Roberta Milliken, Ph.D.

Acting Dean of the College of Arts and Sciences
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662
740.351.3550

March 12, 2018

Nicholas K. Meriwether, PhD
Professor of Philosophy
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662

President Rick Kurtz
Office of the President
Provost Jeffrey A. Bauer
Office of the Provost
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662

Re: Request to Suspend Disciplinary Investigation

Dear President Kurtz and Provost Bauer,

On February 16, 2018, Dean Milliken announced that she was opening a formal investigation against me under Article 18 of the Collective Bargaining Agreement. According to Gene Burns, you have the authority to overturn any disciplinary actions Dean Milliken might recommend after this investigation. So I am writing to request that you intervene to suspend this investigation before she issues a recommendation. After twenty-one years of exemplary service at Shawnee State, it is profoundly disturbing to be the subject of such an unfounded, unjust investigation. Furthermore, it would be in the best interests of all involved if this investigation were closed out immediately.

As you may not be aware of what led to this formal investigation, here is a brief summary. During the first class in my political philosophy class this semester, I responded to a question from a student, [REDACTED], by saying a simple, "Yes, sir." To all appearances, he is male, making this a natural response. I generally refer to students in class using a title (e.g., "Mr.," "Ms.," "Miss") and their last name to foster an atmosphere of seriousness and mutual respect. Not only is this befitting of a college classroom, but this formality greatly assists the students in learning how to accept our differences in a mutually respectful manner, something that is particularly important when discussing extremely controversial topics, such as many of those addressed in my classes. But after class, this student approached me, informing me that he was transgender and demanding that I refer to him with feminine titles and pronouns, as this was his new gender. When I hesitated, he became belligerent, circling me and getting in my face. At one point, he remarked, "Then I guess this means I can call you a cunt." Before leaving, he indicated that he would see to it that I was fired if I did not accede to his demands.

In the weeks thereafter, I spoke repeatedly with Dean Milliken, trying to defuse this situation. I offered to call this student by his last name, thus avoiding any debate over titles or, if he preferred, by his first name. Dean Milliken rejected this approach unless I started referring to all students by their last names alone. But as I expressed to her, this would mean that we would refer to each other the same way as junior high students or teammates on an athletic field, not as scholars engaged in a serious enterprise. Indeed, in most professional settings where one person has some degree of authority (e.g., courts of law, government hearing) participants do not refer to one another either by their first or last names alone. I also notified her of my religious convictions on the issue, hoping to find a way of defusing the matter while still allowing me to live and teach consistent with my

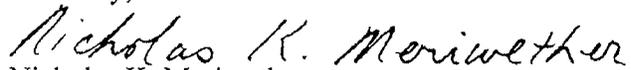
faith, as the enclosed e-mails demonstrate. After this, Dean Milliken indicated that even her proposed approach (*i.e.*, last names only) would violate University policy unless I also agreed to use feminine pronouns for male students and *vice versa* upon request. Indeed, it was my use of masculine pronouns—the standard conventions of English grammar—that sparked this investigation.

Thus, there is no basis for this formal investigation under Article 18, Section 2(C) of the Collective Bargaining Agreement. I have not engaged in any “serious professional misconduct” under Article 7 and have competently and faithfully discharged my professorial duties. Referring to men as “Mr.” and “he” and referring to women as “Ms.” and “she” does not imperil anyone’s health or safety, does not constitute “harassment” or “discrimination” (let alone “severe” harassment or discrimination), and does not impair my ability to fulfil my responsibilities to Shawnee State. This is especially true when I have proposed ways to accommodate students like the one whose complaint sparked this investigation.

At a time when public and state support for higher education is at an all-time low, becoming a lightning rod on such a contentious cultural issue—effectively compelling professors to endorse the transgender movement and policing the use of pronouns on pain of discipline or even dismissal—hardly seems like a prudent course of action for the University. Indeed, if Shawnee State wants to frighten students and parents away from considering it, it will do what Dean Milliken is doing right now: launching a formal investigation against a tenured professor simply because he used the English language in ways that have been utterly uncontroversial since the days of Chaucer.

To be clear, the student whose complaints sparked this investigation has every right to express his views, to try to persuade me to adopt them, and to criticize me if I do not. Indeed, I did not seek to bar him from my class after he used extreme profanity against me, encircled me in a threatening manner, and threatened to have me fired precisely because I thought his views should be represented in a political philosophy course. But on cultural issues like transgenderism, there should be room to differ for students as well as faculty, and the “marketplace of ideas” that universities purport to be is where that room to differ should be most on display. Indeed, the government has no business compelling people to express ideological beliefs they do not hold. I simply seek to exercise this freedom to disagree without having a state institution punish me for doing so. Therefore, I respectfully request that you intervene and suspend Dean Milliken’s investigation immediately.

Sincerely,


Nicholas K. Meriwether
Professor of Philosophy



INVESTIGATION REPORT

TO: Roberta Milliken, Dean, College of Arts and Sciences
FROM: Malonda Johnson, Director, Human Resources
DATE: April 17, 2018
RE: Investigation Results of Nicholas Meriwether

BACKGROUND & SCOPE OF INVESTIGATION

Initial complaint was received on Thursday, January 11, 2018 from Professor Marc Scott to Douglas Shoemaker (Title IX Coordinator). The complaint was assessed by Douglas Shoemaker (Title IX Coordinator) who determined the matter could be addressed through informal resolution. The path of informal resolution was agreed upon by the complainant. Roberta Milliken (Dean, College of Arts & Sciences) met with Professor Meriwether on three separate occasions in an effort to achieve informal resolution. On February 15, 2018 complainant informed Dean Milliken that Professor Meriwether's behavior had not changed. Due to unsatisfactory resolution of the situation, a decision was made to address this matter formally. Reference *Appendix A* for a timeline of events during the assessment and informal resolution period.

The case was assigned to Malonda Jonson (Deputy Title IX Coordinator) for investigation on February 16, 2018. Kara Arms (Human Resources Administrator) assisted with the investigation serving as primary note taker during all interviews. Investigation interviews commenced on February 26, 2018 with the following individuals:

- Witness Interview: Eric Clift (Student) – February 26, 2018 – 4:00pm
- Witness Interview: Catherine Koepfel (Student) – February 28, 2018 – 1:30pm
- Complainant Interview: [REDACTED] (Student) – February 28, 2018 – 4:00pm
- Respondent Interview: Nicholas Meriwether (Professor) – March 15, 2018 – 10:00am

To better understand what transpired during the informal resolution process, Dean Milliken was interviewed on March 22nd. A summary of those details are included in Appendix A.

The following section of Shawnee State University's Policy 5.01 (Non-Discrimination/Harassment) and Procedure 5.01:2 (Reporting & Investigating Sexual Assault, Sexual Misconduct & Other Forms of Discrimination) may have been violated by Mr. Meriwether:

- Section 18.6.2.2 Hostile environment toward complainant in an educational context

The complete policy can be found at:

<http://www.shawnee.edu/leadership/policies/media/procedure-501-2.pdf>

SUMMARY OF ALLEGATION(S)

Complainant, [REDACTED] transgender student who legally changed her name through the Registrar's office, alleges Professor Meriwether referred to her as "he" the first day of class. According to [REDACTED], she went up to Meriwether after class to ask that he refer to her using she/her pronouns. [REDACTED] shared that when she first approached Meriwether he said, "I think I know what this is about." He then started debating her and said it was his own opinion. [REDACTED] said she responded by telling him it was disrespectful and asked how he would feel if she referred to him as cunt. According to [REDACTED] Meriwether responded it wasn't the same thing. [REDACTED] shared that she asked Meriwether several times for a yes or no answer (to using female pronouns) and he responded saying he would say "[REDACTED]". [REDACTED] shared that he uses pronouns for everyone else in the class.

[REDACTED] then shared that Meriwether kept referring to her as [REDACTED] and using masculine pronouns (he) after Dean Milliken had spoken with him twice. [REDACTED] shared that Meriwether stopped referring to her altogether or just says "you". [REDACTED] further indicated that there is no commentary from Meriwether when she raises her hand in class, but he provides commentary to everyone else.

SUMMARY OF WITNESSES ACCOUNT

- Below is the response from each witness regarding the treatment of transgender students:
 - **Witness #1:** On January 12, 2018 witness reported to Marcie Simms (Dean of Students) that he intends to take his Ethics course with another professor because Meriwether knew he was transgender, and refused to refer to him as male or call him by his preferred name. Witness also stated in this communication that Meriwether mentioned "having problems" with transgender students, so to alleviate problems in the class he agreed to Meriwether calling him by his last name.

During the investigation interview witness shared that his birth name was on the roster which is different than the registered name. Witness indicated he approached Meriwether during break because he didn't want there to be confusion when he turned his assignments in with his registered name. According to witness, Meriwether replied, "Oh, you're transgender - I don't recognize that and I won't call you by your preferred pronouns. The most I will do is call you by your last name, exclusively." As a result, witness ended up transferring to a different class.

Witness shared that after making a comment on social media, current and past students commented that Meriwether wouldn't get any better and recommended switching classes. Witness indicated that Meriwether refers to people by how they appear. He also shared that a Title IX event was cancelled out of concern that Meriwether and other students would cause a situation/conflict.
 - **Witness #2:** Witness is in the process of getting a name change, but hasn't told Professor Meriwether about the name change in fear of backlash. Witness has had multiple classes with Meriwether and overheard him announce his biases in front of

the class regarding gay rights and marriage and his opinions of LGBT are known. According to witness, Meriwether uses pronouns to address students and refers to them based on how they appear. Witness also shared that Meriwether picks and chooses students to call out in class (picking favorites).

SUMMARY OF RESPONDENT'S ACCOUNT

Professor Meriwether shared that his interactions with [REDACTED] have been quite good with the exception of the first day. Meriwether explained that after roll on the first day he looked over to Mr. [REDACTED] raising his hand. Meriwether explained that the student appeared to be a male so he responded by saying, "Yes, sir." Meriwether then shared that after class he (referring to [REDACTED]) approached him and said, "You need to refer to me as she." Meriwether responded, "I am not sure I can do that." According to Meriwether, [REDACTED] reacted in a threatening manner asking why, and Meriwether responded, "I'm not sure students can demand what they are called." According to Meriwether, [REDACTED] said, "Well, that means I can call you a cunt." According to Meriwether, [REDACTED] insisted that he would get him (Meriwether) fired over this.

Meriwether confirmed that he refers to other students using male or female pronouns when calling upon them in class, but addresses [REDACTED] as "[REDACTED]" if it comes up. According to Meriwether, it rarely comes up since it is a small class and he can simply point to him when he ([REDACTED]) raises his hand.

Meriwether shared that on a couple occasions he inadvertently/spontaneously used masculine pronouns after his conversations with Dean Milliken when referring to him ([REDACTED]). According to Meriwether this was because that was what he was used to.

Meriwether does not believe he has treated [REDACTED] different than other students. He believes that he treats all students exactly the same, i.e., by referring to them by their biological gender, but [REDACTED] insists on being treated differently, i.e., by being referred to by his chosen gender. Meriwether indicated that he cannot accommodate him without violating his sincerely-held beliefs, but he is willing to find another mutually-acceptable accommodation, such as only using his legal name.

Meriwether recalled another transgender student approaching him at the beginning of the semester, but he does not recall the specifics of the interaction or what was said to this student.

FINDINGS

Professor Meriwether has been reluctant to address [REDACTED] using she/her pronouns. When called upon in class, [REDACTED] is referred to as "[REDACTED]" whereas all other students are addressed using formal Mr. Surname and Ms. Surname. While asked on several occasions to address [REDACTED] in the same manner as other students, Meriwether indicated he would call [REDACTED] by "his" legal name, "[REDACTED]" or "[REDACTED]" but continue to use Mr. Surname and Ms. Surname for the others.

Professor Meriwether refuses to use preferred pronouns when addressing transgender students. He views this as a matter of academic freedom and truth that he intends to exercise. Professor

Meriwether on several occasions communicated that he does not recognize transgenderism – he specifically stated that he believes transgender is a lie and mental illness and that Professors should not have to change.

University Policy 5.01 Non-Discrimination/Harassment prohibits discrimination against any individual because of race, color, genetic information, religion, age, disability, national origin, ancestry, sex, pregnancy, sexual orientation, gender identity, veteran status or military status. Applicable Procedure 5.01:2, defines gender identify as a person’s innermost concept of self as male or female or both or neither—how individuals perceive themselves and what they call themselves. One’s gender identity can be the same or different than the sex assigned at birth.

In this case, the complainant perceives them self as a female which is different than the sex assigned at birth. Professor Meriwether however will only refer to students by their sex assigned at birth. Professor Meriwether refuses to recognize the complainant based on their gender identity (female), and continues to treat the complainant differently than other students when being addressed in class (i.e. being called upon as ““ [REDACTED] ’ or “ [REDACTED] ’ while others are called upon using pronouns).

It is concluded that Professor Meriwether’s disparate treatment has created a hostile environment for the complainant, which is a violation of Shawnee State University’s Policy 5.01 (Non-Discrimination/Harassment).

APPENDIX A: Timeline of Events During Assessment & Informal Resolution Period

- **1/11/2018:** Professor Marc Scott emailed Title IX Coordinator, Douglas Shoemaker reporting information he received from a Department Chairperson. The Department Chair reported that a Professor shared with them their interaction with a student on 1/10/2018 after the student asked the Professor to refer to them using pronouns for a woman. According to the Professor, the student asked them to refer to the student using pronouns for a woman. The Professor indicated they responded to the student that they would not do so. The Professor stated after class the student approached them and repeated the request for the Professor to use gender pronouns that conformed to her gender identity. The Professor again refused. The Professor said a heated exchange occurred and at one point the student asked "Well, what if I just decided to call you a cunt?". The Professor stated that it was not the same issue. The Professor said the student then stated she would be filing a complaint and speaking with Dr. Scott. The Chair reporting the incident to Professor Scott indicated that the Professor was using male pronouns when recounting the interaction they had with the student.
- **1/11/2018:** Dean Simms emailed Title IX Coordinator, Douglas Shoemaker reporting she received an email from Professor Nicholas Meriwether describing an interaction he had with a student (██████████) on 1/10/2018. His remarks in the email corresponded with the remarks Professor Scott had received from the Department Chair the previous day. In the email he stated he wanted Dean Simms to be aware because he was concerned the student might become "aggressive" in class. Professor Meriwether also stated he had notified security in case "I need to ask him to leave". He also stated in the email that he had told ██████████ that "I don't think people should tell me what I can or can't call them". He used male pronouns referring to ██████████ throughout the email.
- **1/11/2018:** Title IX Coordinator, Douglas Shoemaker met with student ██████████. Her account of the interaction with Professor Meriwether corresponded with what had already been reported. ██████████ further stated she would be comfortable with an informal resolution to the issue and that she just wanted to be called by her preferred pronoun and not be treated differently.
- **1/12/2018:** Title IX Coordinator advised Dean Milliken of the situation and decision to not move forward with an investigation, as both parties were in agreement as to what had transpired between them. It was also communicated to Dean Milliken that ██████████ was comfortable with an informal resolution. Dean Milliken agreed to discuss the situation with Professor Meriwether and come to an agreement that would make all parties comfortable.
- **1/2018:** Sometime around January 12th (date unknown), Dean Milliken met with Professor Meriwether. Meriwether provided his account of what occurred on January 10th and his disbelief in transgenderism. He explained that he thought it was an illness and a lie, and he didn't want to be forced to lie because it wouldn't be true. Milliken explained to Meriwether, that that may be his philosophy, but the student wasn't feeling comfortable in his class. Meriwether also shared that he liked to use formal Mr. Surname and Ms. Surname in class. Milliken explained that she felt it may not be an issue if he agreed to refer to ██████████ by her surname.

- **1/22/2018:** Title IX Coordinator followed-up with [REDACTED] by phone and emailed Dean Milliken informing her of the conversation with [REDACTED]. [REDACTED] shared there had been no further confrontations with Professor Meriwether, but she still did not feel an adequate solution had been reached. She stated Professor Meriwether only refers to her as "[REDACTED]" when he calls on her and he continues to refer to other students as "Ms. Smith or Mr. Jones" and uses he/his or her/hers in conversation with them but will only call [REDACTED] "[REDACTED]". For example, "[REDACTED] was correct in [REDACTED]'s answer and so [REDACTED] doesn't have to answer the next question." She stated this is not an acceptable solution and that she still feels she is being treated differently than the other students which is continuing to make her uncomfortable in his class. Title IX Coordinator informed Dean Milliken that he felt an informal discussion with Dr. Meriwether is still the most reasonable way to handle this situation. However, he was concerned that we have been put on notice by this student she is not satisfied with our resolution thus far and that she still feels like the classroom is a hostile environment.
- **1/23/2018:** Dean Milliken advised Title IX Coordinator that she would have a meeting with Professor Meriwether the following day to discuss the unsatisfactory resolution of the situation.
- **1/25/2018:** Dean Milliken had a second meeting with Meriwether to discuss the student being uncomfortable with him continuing to use only her surname and the formal Mr. Surname and Ms. Surname with other students. Milliken explained to Meriwether that the student felt she was being treated differently. Milliken asked Meriwether once again to change how he addressed the student and advised him of the Non-Discrimination policy. Meriwether responded that he didn't want to and thought it was a matter of academic freedom and truth. According to Milliken, Nick was upset and he stated, again, that transgender is a lie and a mental illness. He stated he felt he was still right, and asked what the university would do if he refused to call the student by the name/pronouns requested. Milliken responded that himself and the University could be vulnerable to legal action. Meriwether indicated he had consulted a lawyer and had legal counsel for himself.

During the meeting Meriwether discussed the "wrongness" of transgender people and linked it to safe spaces and how he was treated when he went to school, indicating that people need to toughen up. He specified that the Professor shouldn't have to change and the student should accept it. He said it was dignified to call students by their formal name in class and makes them take the class more seriously. Meriwether said it was his preference and he was exercising his academic freedom to do so, and asked Milliken if he should now add a disclaimer to the bottom of his syllabus, or make an announcement to his class that he would now call everyone by their last name but it is not because I believe in or endorse transgender people. Milliken explained that she didn't think it was a good idea, and it would make the students feel even more singled out. Milliken asked Nick again if he would think about only using last names in class. He said he would have to check with friends, but wasn't sure if he would. According to Milliken, he said he might be open to calling a student by his/her preferred name if a student seemed frail or distressed. As an example, if a student came to him with a trembling lip, then he might consider it, out of fear the student might potentially harm him/herself. Meriwether then explained that the student in question, is not that (frail), and he thinks "he" (the student) has an agenda.

- **2/2018:** Title IX Coordinator received a call from Tena Pierce, Executive Assistant to Dr. Anne Marie Gillespie, Vice President of EMSA, that student ██████ had been to their office to voice her concerns. ██████ indicated to Pierce that she was scheduled to meet with Dean Simms but wanted to make sure leadership was aware that her complaint had not been resolved and she did not believe anything was being done to address it. She stated she did not wish to speak with Title IX any further and that if something was not done about the discrimination, she would seek a lawyer.
- **2/6/2018:** Title IX Coordinator discussed matter with General Counsel who advised that Dean Milliken would be taking next steps to address this matter.
- **2/7/2018:** Dean Simms and Milliken met with ██████ to let her know the University was addressing the matter.
- **2/12/2018:** Dean Milliken had a third meeting with Professor Meriwether. According to Milliken, before the meeting started, his body language said it all. When she entered, he sat back in his chair and crossed his arms. Meriwether told her that he would send an email with a compromise, explaining that he would call ██████ by "his" legal name, "█████" or "█████". Milliken asked if it would be addressing the other students in the class the same way, and he said no, that he would continue to use Mr. Surname and Ms. Surname for the others. Milliken reminded Meriwether of the Non-Discrimination policy. He replied that he did not think it applied and that he thought this was more an academic freedom issue. He continued by saying that if he capitulated, it would lead to the corruption of the English language and that the student would have won.

Milliken also shared that Meriwether said he believed some campus departments were encouraging the student to complain against him. Milliken asked him which department he thought was doing this, and he said the Diversity Office. Milliken assured him that was not the case. According to Milliken, Meriwether kept talking about not believing in the notion of transgender people, how he believed it to be an illness that caused corruptions and social problems, and that there is no scientific proof it exists. Milliken indicated that with all their meetings, she had to try and bring Meriwether back from talking about his more general philosophies to the fact that there was a student in his class who was feeling singled out, that Meriwether was treating differently. Meriwether indicated that he wished he would have just removed the student from the class at the beginning after they had had the altercation.

2/13/2018: Dean Milliken sent a written communication to Professor Meriwether regarding their meeting on February 12th (*Appendix B*)

2/15/2018: ██████ informed Milliken that Meriwether's behavior had not changed (*Appendix C*).

2/16/2018: Dean Milliken sent Professor Meriwether the formal investigation notice.



February 13, 2018

Nicholas Meriwether, PhD
Professor, Department of Philosophy
MAS 407
Shawnee State University

BY INTEROFFICE MAIL

Dear Dr. Meriwether,

I have spoken with you several times, mostly recently on January 25 and February 13, regarding the informal complaint of a student in your Political Philosophy class that you did not address her as "Ms. _____" or "Miss _____," as you acknowledge you address other female members of the class, while you address male students as "Mr. _____." The complaint alleged that the student informed you that she identifies as a female. It was alleged that upon being notified of this, you began calling this particular student only by her surname, unlike the way you address other students, i.e., without preceding it with "Mr.," "Miss," or "Ms." and that last Tuesday you referred to the student as "he" in your class. The student has notified the Dean of Students that you have continued to ignore or reject her requests that you treat her the same as other students who identify themselves as female.

Policy No. 5.01REV, promulgated by the Shawnee State University Board of Trustees, has among its purposes the creation of an educational environment that prohibits discrimination on the basis of "race, color, genetic information, religion, age, disability, national origin, ancestry, sex, pregnancy, sexual orientation, gender identity, veteran status or military status." This letter is not a notification that you are being investigated for a policy violation. Rather, it is a formal notice that are expected to comply with Policy No. 5.01REV by treating all students the same, irrespective of their gender identity. Should there be future complaints of disparate treatment in violation of this policy, whether involving the student referred to above or not, the University may conduct an investigation in accordance with University policies and the faculty collective bargaining agreement. If such an investigation substantiates a complaint, you could be subject to informal or formal disciplinary action.

I look forward to your cooperation in this matter.

Regards,

A handwritten signature in cursive script, appearing to read 'Roberta Milliken'.

Roberta Milliken, Ph.D.
Acting Dean, College of Arts and Sciences

College of Arts & Sciences

FEB 15 2018 3:27pm

Hi Roberta!

Dean's Office

This is [redacted] we spoke over Title IX issues regarding Meriwether. I don't know if you spoke to him ~~about~~ again about fixing pronouns, but I just wanted to stop by and leave a record of what happened today. We took a quiz in class and immediately went over it. Professor Meriwether asked ~~about~~ about an answer to which I gave. He said in/to the class, "The way he put - uh sorry, the way [redacted] put it is correct." which happened at 2:26pm today, February 15th 2018.

Thank you for trying to help get this issue fixed,

- [redacted]

to contact me my information is

Student # [redacted]

Phone # [redacted]

email - [redacted]

or [redacted]

March 12, 2018

Nicholas K. Meriwether, PhD
Professor of Philosophy
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662

President Rick Kurtz
Office of the President
Provost Jeffrey A. Bauer
Office of the Provost
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662

Re: Request to Suspend Disciplinary Investigation

Dear President Kurtz and Provost Bauer,

On February 16, 2018, Dean Milliken announced that she was opening a formal investigation against me under Article 18 of the Collective Bargaining Agreement. According to Gene Burns, you have the authority to overturn any disciplinary actions Dean Milliken might recommend after this investigation. So I am writing to request that you intervene to suspend this investigation before she issues a recommendation. After twenty-one years of exemplary service at Shawnee State, it is profoundly disturbing to be the subject of such an unfounded, unjust investigation. Furthermore, it would be in the best interests of all involved if this investigation were closed out immediately.

As you may not be aware of what led to this formal investigation, here is a brief summary. During the first class in my political philosophy class this semester, I responded to a question from a student, [REDACTED] by saying a simple, "Yes, sir." To all appearances, he is male, making this a natural response. I generally refer to students in class using a title (e.g., "Mr.," "Ms.," "Miss") and their last name to foster an atmosphere of seriousness and mutual respect. Not only is this befitting of a college classroom, but this formality greatly assists the students in learning how to accept our differences in a mutually respectful manner, something that is particularly important when discussing extremely controversial topics, such as many of those addressed in my classes. But after class, this student approached me, informing me that he was transgender and demanding that I refer to him with feminine titles and pronouns, as this was his new gender. When I hesitated, he became belligerent, circling me and getting in my face. At one point, he remarked, "Then I guess this means I can call you a cunt." Before leaving, he indicated that he would see to it that I was fired if I did not accede to his demands.

In the weeks thereafter, I spoke repeatedly with Dean Milliken, trying to defuse this situation. I offered to call this student by his last name, thus avoiding any debate over titles or, if he preferred, by his first name. Dean Milliken rejected this approach unless I started referring to all students by their last names alone. But as I expressed to her, this would mean that we would refer to each other the same way as junior high students or teammates on an athletic field, not as scholars engaged in a serious enterprise. Indeed, in most professional settings where one person has some degree of authority (e.g., courts of law, government hearing) participants do not refer to one another either by their first or last names alone. I also notified her of my religious convictions on the issue, hoping to find a way of defusing the matter while still allowing me to live and teach consistent with my

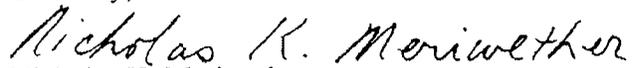
faith, as the enclosed e-mails demonstrate. After this, Dean Milliken indicated that even her proposed approach (*i.e.*, last names only) would violate University policy unless I also agreed to use feminine pronouns for male students and *vice versa* upon request. Indeed, it was my use of masculine pronouns—the standard conventions of English grammar—that sparked this investigation.

Thus, there is no basis for this formal investigation under Article 18, Section 2(C) of the Collective Bargaining Agreement. I have not engaged in any “serious professional misconduct” under Article 7 and have competently and faithfully discharged my professorial duties. Referring to men as “Mr.” and “he” and referring to women as “Ms.” and “she” does not imperil anyone’s health or safety, does not constitute “harassment” or “discrimination” (let alone “severe” harassment or discrimination), and does not impair my ability to fulfil my responsibilities to Shawnee State. This is especially true when I have proposed ways to accommodate students like the one whose complaint sparked this investigation.

At a time when public and state support for higher education is at an all-time low, becoming a lightning rod on such a contentious cultural issue—effectively compelling professors to endorse the transgender movement and policing the use of pronouns on pain of discipline or even dismissal—hardly seems like a prudent course of action for the University. Indeed, if Shawnee State wants to frighten students and parents away from considering it, it will do what Dean Milliken is doing right now: launching a formal investigation against a tenured professor simply because he used the English language in ways that have been utterly uncontroversial since the days of Chaucer.

To be clear, the student whose complaints sparked this investigation has every right to express his views, to try to persuade me to adopt them, and to criticize me if I do not. Indeed, I did not seek to bar him from my class after he used extreme profanity against me, encircled me in a threatening manner, and threatened to have me fired precisely because I thought his views should be represented in a political philosophy course. But on cultural issues like transgenderism, there should be room to differ for students as well as faculty, and the “marketplace of ideas” that universities purport to be is where that room to differ should be most on display. Indeed, the government has no business compelling people to express ideological beliefs they do not hold. I simply seek to exercise this freedom to disagree without having a state institution punish me for doing so. Therefore, I respectfully request that you intervene and suspend Dean Milliken’s investigation immediately.

Sincerely,


Nicholas K. Meriwether
Professor of Philosophy

From: Nicholas Meriwether
Sent: Thursday, March 1, 2018 1:46 AM
To: Roberta Milliken
Subject: Re: Clarifying University Policies

Dear Roberta,

Thanks for your response. But I need further clarification as to the terms of the policy. You indicate that it would be acceptable for me to call all students by his/her first or last name. However, you do not address the use of pronouns as it relates to students other than the student in question. If I chose to begin calling every student by his/her first or last name as you propose, I would still like to retain the ability to use biologically correct pronouns when referring to all students except the student in question. Would the policy prevent me from using biologically correct pronouns when referencing other students, as long as I addressed the student in question using first or last name and refrained from using pronouns?

Regards,

-- Nick

From: Roberta Milliken
Sent: Monday, February 26, 2018 1:55 AM
To: Nicholas Meriwether
Subject: RE: Clarifying University Policies

Hi, Nick—

The goal of University Policy 5.01REV is ensure that every student is treated the same in our classes to avoid issues of discrimination and/or harassment. Two of the options we have discussed and you have reiterated in your letter would seem to achieve this: calling every student in your classes by his/her last name or by his/her first name. The point is, again, to treat all of your students the same.

Best,
Roberta

Roberta Milliken, Ph.D.

Acting Dean of the College of Arts and Sciences
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662
740.351.3550

From: Nicholas Meriwether
Sent: Friday, February 23, 2018 8:51 AM
To: Roberta Milliken <rmilliken@shawnee.edu>
Cc: meriwether5@mac.com
Subject: Clarifying University Policies

Dear Roberta,

I am sending you this letter in order to get clarification regarding university policies regarding the way I address students. As you can see, I'm having formatting problems with the university email system, so I'm also attaching a hard copy.

Thank you in advance for your time.

Regards,

Nick

Nicholas K. Meriwether, PhD
Professor of Philosophy
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662

Roberta Milliken, PhD
Acting Dean of the College of Arts and Sciences
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662

Re: Clarifying University Policies

Dear Dean Milliken,

I have received your letter of February 13, 2018 and your e-mail of February 16, 2018 regarding the manner in which I address and refer to students in my classes. As I assess how to respond to these complaints and investigations, I wanted to clarify a few points and ensure that I correctly understand the University's policies on this issue.

First, please understand that my remarks to the student who lodged the complaint that sparked your February 16th e-mail were inadvertent. As you know, I am still assessing how to respond to your latest correspondence and the investigations they reference. I may ultimately conclude that I cannot comply with your directives due to my conscience, ethical or religious convictions, or my views on free speech. But when this student participated in class discussions on February 15th, my comments were the result of deeply-ingrained habit, following the standard conventions of English grammar and usage that until just recently were utterly uncontroversial.

Second, I need to inform you that in addition to other pedagogical, philosophical, and ethical concerns, I am a Christian. As such, it is my sincerely held religious belief, based on the Bible's teachings, that God created human beings as either male or female, that this gender is fixed in each person from the moment of conception, and that it cannot be changed. It is also my sincerely held religious belief that Scripture forbids affirming things that are not true (*e.g.*, Prov. 4:24, I Peter 2:1). Therefore, my religious beliefs and convictions forbid me from referring to a student who is biologically male using feminine titles (*e.g.*, Miss, Ms.) or pronouns and from referring to a student who is biologically female using masculine titles (*e.g.*, Mr.) or pronouns. I continue to hope that we can come to an arrangement that will satisfy your concerns and allow me to live in accordance with my faith and convictions, and I hope this notification helps you understand my perspective.

Third, I previously proposed an arrangement that I had hoped would resolve this matter. Specifically, I had offered to refer to the student whose complaints sparked your letters and this investigation by the legal name of choice (*i.e.*, first or last name) without using any title or pronoun, though I would continue to use biologically-appropriate pronouns for all others when the situation naturally called for it during the Socratic discussions that my classes feature. Of course, I was willing to do the same for any other student who requested it. But when we spoke on January 25th and February 12th, you indicated that this arrangement would violate the University's policy regarding sexual orientation and gender identity discrimination as it does not treat all students identically and that I should consider no longer referring to any student by "Mr." or "Ms." Please confirm that my understanding of University policy is correct.

As I assess my options, I would like to know whether another arrangement would comply with University policy. Let's say I started referring to all students by their last names, without using any titles, while still referring to all other students by their biologically-appropriate pronouns. To me, this approach of not using titles may undermine the atmosphere of mutual respect and seriousness that is befitting a college classroom, as my students and I would then refer to each other the same way as junior high students or teammates on an athletic field. While I remain concerned about this, at this point, I am just trying to ascertain whether this approach

would comply with the University policy of treating all students the same. Thank you in advance for letting me know whether it would and, if not, why it would not.

If University policy prohibits me from following this second approach, my understanding is that there is only one way for me to interact with students. That is, I would have to stop referring to students using titles (*i.e.*, just use their first or last names) and stop using pronouns altogether for any student. Please confirm whether my understanding of University policy and its implications for me is correct.

Again, I am writing this letter to explain a few matters and to clarify my options going forward. I look forward to receiving your responses and hope they will provide some clarity as I determine my next steps.

Sincerely,

Nicholas K. Meriwether

Roberta Milliken

From: Roberta Milliken
Sent: Thursday, April 19, 2018 12:18 PM
To: Nicholas Meriwether
Cc: Eugene Burns (eburns@shawnee.edu); Jeff Bauer (jbauer@shawnee.edu)
Subject: Notification of Charges
Attachments: Meriwether Charge Notice.pdf

Dear Nick,

I am notifying you that I have received the investigative report conducted by Malonda Johnson, the Director of Human Resources and a Deputy Title IX Coordinator, regarding a complaint that was filed on February 15, 2018 by a student in your Spring 2018 Philosophy course. The report summarizes the complaint and relates it to violations of Shawnee State University's Policy 5.01 and Procedure 5.01:2.

The investigation did determine that your disparate treatment of the complainant in your class has caused a hostile environment. This is a violation of University Policy 5.01. As a result of these investigative findings, I have determined that a formal charge is warranted. In accordance with Article 18 in the CBA, you will have the opportunity to further review the charges and to provide a response. A conference has been scheduled at the following time and location:

Friday, April 27th at 9:00 on the CAS Dean's conference room.

You have the right to have an SEA representative with you at the conference.

Regards,

Roberta

Roberta Milliken, Ph.D.

Acting Dean of the College of Arts and Sciences
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662
740.351.3550



April 18, 2018

Dear Nick,

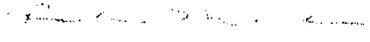
This letter is notification that I have received the investigative report conducted by Malonda Johnson, the Director of Human Resources and a Deputy Title IX Coordinator, regarding a complaint that was filed on February 15, 2018 by a student in your Spring 2018 Philosophy course. The report summarizes the complaint and relates it to violations of Shawnee State University's Policy 5.01 and Procedure 5.01:2.

The investigation did determine that your disparate treatment of the complainant in your class has caused a hostile environment. This is a violation of University Policy 5.01. As a result of these investigative findings, I have determined that a formal charge is warranted. In accordance with Article 18 in the CBA, you will have the opportunity to further review the charges and to provide a response. A conference has been scheduled at the following time and location:

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Regards,


Roberta Milliken, Ph.D.
Acting Dean of the College of Arts and Sciences
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662
rmilliken@shawnee.edu

Roberta Milliken

From: Nicholas Meriwether
Sent: Tuesday, May 8, 2018 8:46 PM
To: Roberta Milliken
Subject: Response to Appendix A
Attachments: 2018.03.12 Meriwether Letter to President & Provost.pdf

Response to Appendix A

Dear Dean Milliken,

As you will recall, I received a copy of Appendix A to Ms. Johnson's investigation report on April 27, 2018, just shortly before we were to meet that day. As I needed some time to review this document before trying to discuss its contents, we postponed our meeting until May 9th.

To streamline that meeting, I wanted to respond to a few points in writing. Thank you in advance for including this e-mail in the collection of documents that get forwarded to the other officials who will review the proceedings so far.

In your summaries of our conversations, you allude to my beliefs regarding transgenderism, using the terms "lie" and "mental illness." These summaries are incomplete and thus do not accurately reflect my views, which I explained in my correspondence with you, Provost Bauer, and President Kurtz. To be clear, I do not believe that those who describe themselves as transgender or who claim to identify as something other than their biological sex are lying. That is, I do not believe they are saying something they know to be false. But as stated before, I believe that God created human beings as either male or female, that this gender is fixed in each person from the moment of conception, and that it cannot be changed. So these individuals sincerely believe something that is not true. The causes of this gender dysphoria are doubtlessly complex and best left to mental health professionals. But I should not be forced to affirm or contribute to this confusion in the way that I speak, as my religious convictions prohibit me from doing so and the First Amendment prevents the University from forcing me to violate those convictions.

Nor do your descriptions accurately reflect the tone of our conversations, which were all quite collegial, at least as far as I was concerned. The effort to read something into my tone of voice or body language is disappointing. For one thing, it was clear early on that this process focused on forcing me to affirm beliefs I do not hold, something any reasonable person would find objectionable. For another, sitting back in a chair with arms crossed is a common posture to assume when a visitor enters one's office.

Last, the summary provided in Appendix A is incomplete in that it ends on February 16, 2018. As you know, on February 23rd, I responded to your letter of February 13th and your e-mail of February 16th. This led to several exchanges between us and culminated in a letter to President Kurtz and Provost Bauer on March 12th. As these e-mails and letters summarize my views in my own words and outline the accommodations I proposed, I once again request that they be included in the record of this investigation. Please confirm that they, along with this e-mail, will be included as this matter proceeds to the next stages.

Sincerely,

Nicholas K. Meriwether

From: Nicholas Meriwether
Sent: Friday, June 1, 2018 6:29 AM
To: Jeff Bauer
Cc: Roberta Milliken; Eugene Burns; Pamela Otworth
Subject: Re: Report on Formal Investigation

Dear Provost Bauer

Thank you for reaching out to set up the conference to discuss Dean Milliken's report. Gene Burns and I are available on June 4th. If that does not work, Gene's next availability is July 15th. Whenever the schedules align, I look forward to meeting with you, but I will respond to Dean Milliken's report in writing here to make that meeting more efficient. I have previously responded to other inaccuracies and mischaracterizations of my views and actions, and you can find those responses in the documents attached to Dean Milliken's report (e.g., Attachment C, Appendix D to Attachment D, and Attachment F).

Throughout her report, Dean Milliken repeatedly characterizes my actions as treating [REDACTED] differently than other students. But it is important to remember that this whole controversy arose because I was treating him precisely the same as I treat all other students. Regardless of his gender identity, [REDACTED] is biologically male, and I referred to him the same way as I refer to all other biologically male students, using the title "Mr." and masculine pronouns. After [REDACTED] objected, I changed my standard practice and no longer referred to him as "Mr." to accommodate [REDACTED]'s request.

Not satisfied with this, [REDACTED] insisted that I use feminine pronouns when addressing him, and Dean Milliken now endorses that demand. Though I have tried to accommodate [REDACTED], my conscience and religious convictions will not allow me to do this, as I explained to Dean Milliken on February 23rd and to you on March 12th. To do so would be to endorse and communicate beliefs about human nature I do not hold, and I should not be compelled to do this.

Throughout this process, no one has even alleged that I treated [REDACTED] differently than other students in any other way because I never did. He continued to participate actively in class discussions on the same basis as any other student, and he was evaluated based on the quality of his assignments—just like every other student. So despite this controversy, his access to educational benefits and opportunities was never jeopardized.

Thus, the sole question before you is whether the University will compel me to communicate publicly views about human nature—on a newly emerging cultural issue on which reasonable minds should be allowed to differ—that I do not hold and that would violate my sincerely held religious convictions. As my repeated efforts to defuse this matter have proved futile, I respectfully request that you dismiss the charges against me in full under Article 18, Section 4(D)(1) of the Collective Bargaining Agreement.

Sincerely,

Nicholas K. Meriwether

From: Jeff Bauer
Sent: Wednesday, May 30, 2018 9:31:02 AM
To: Nicholas Meriwether
Cc: Roberta Milliken; Eugene Burns; Pamela Otworth
Subject: RE: Report on Formal Investigation

Dr. Meriwether,

Dean Milliken has issued a report and recommendation for you to receive formal discipline based on the findings of an investigation conducted during spring semester 2018. The Collective Bargaining Agreement, Article 18, Section 4A and B states that "within five (5) working days of the issuance of the Dean's report the Provost shall schedule a formal disciplinary conference with the bargaining unit member, a representative of the Association and the investigator. The bargaining unit member may decline attendance and/or respond to the Dean's report in writing. At this conference both the investigator and the bargaining unit member shall be afforded the opportunity to make a statement. The Provost shall insure that both parties are fully heard." You have the option of attending or declining the formal disciplinary conference.

Please provide Ms. Otworth with times that you and your SEA representative can meet and we'll set up the conference accordingly.

Dr. Jeffrey A. Bauer
Provost and Vice President for Academic Affairs
Shawnee State University
Office: 740-351-3641
jbauer@shawnee.edu

From: Roberta Milliken
Sent: Tuesday, May 29, 2018 3:56 PM
To: Nicholas Meriwether <nmeriwether@shawnee.edu>; Eugene Burns <eburns@shawnee.edu>; Jeff Bauer <jbauer@shawnee.edu>
Subject: Report on Formal Investigation

Dear Dr. Meriwether,

Thank you for meeting with me on May 9th. As per Article 18, section 3D of the CBA, I am attaching a written report that includes my findings regarding the formal investigation. I have copied Dr. Burns and Provost Bauer as well. I have also sent a hard copy of this report to you via interoffice mail. Please let me know if you have any questions about it.

Regards,

Roberta

Roberta Milliken, Ph.D.

Acting Dean of the College of Arts and Sciences
Shawnee State University
940 Second Street
Portsmouth, Ohio 45662
740.351.3550



MEMORANDUM

TO: Dr. Nicholas Meriwether, Professor, Department of English & Humanities

FROM: Dr. Jeffrey A. Bauer, Provost *Jeffrey A. Bauer*

DATE: June 14, 2018

SUBJECT: Provost's Decision on Formal Disciplinary Action

This memo provides you with my decision on formal disciplinary action recommended by Dean Roberta Milliken following a Title IX investigation. Ms. Malonda Johnson, Director of Human Resources and Deputy Title IX Director, conducted an investigation into a student complaint that alleged discriminatory treatment in your class. The report on the investigation states your "disparate treatment" of the complainant in class is a violation of BOT Policy 5.01.

I reviewed the Title IX investigative report submitted by Ms. Johnson, the Dean's Findings submitted by Dean Milliken, and considered information that you provided to President Rick Kurtz and me in a letter dated March 12, 2018. In addition, I also reviewed information that you included in an e-mail sent to me on June 1, 2018.

BOT Policy 5.01 states that "Shawnee State is committed to having an educational and working environment for students ... that is without unlawful or prohibited discrimination and harassment". Despite your statement that you treated the complainant the same as all other students (June 1, 2018, e-mail), your actions demonstrate otherwise. In this case, you continued to address the complainant differently from other students based on a trait that is protected under our anti-discrimination policy even after being warned by Dean Milliken that this was a violation of policy.

I approve Dean Milliken's recommendation of formal disciplinary action. I will ask Dean Milliken to provide me with a letter of warning that will be placed in your personnel file. When the warning letter is placed in your file, you will be sent a stamped copy of the document at the time of placement and will have the opportunity to add a written statement as an attachment to the document.



Memorandum

DATE: June 22, 2018

TO: Dr. Nicholas Meriwether

FROM: Dr. Roberta Milliken, Acting Dean, College of Arts and Sciences *Roberta Milliken*

RE: Written Warning

CC: Dr. Jeff Bauer, Provost and Vice President of Academic Affairs
Dr. Eugene Burns, President, Shawnee Education Association
Personnel File

Per Article 18.2.C.1.a in the Collective Bargaining Agreement, I am providing you with this written warning and placing a copy in your personnel file. In his memorandum dated June 14, 2018, Provost Bauer approved this formal disciplinary action that comes as a result of a Title IX investigation and my findings regarding the violation of Shawnee State University's Policy 5:01.

As BOT Policy 5.01 makes clear, Shawnee State is dedicated to providing an educational environment that does not discriminate against any individual due to a variety of traits, including gender identity. Given that you persisted in treating the complainant differently than other students in your class throughout spring term because of her gender identity, you engaged in behavior that is prohibited by the university. I would therefore caution you against any such behaviors in the future to avoid further corrective actions.

