

June 30th, 2020 - MEMO FROM CCFSC

To: Vice President of Academic Planning and Policy, Don Straney

From: Chair CCCFSC, Michael Cawdery

Via: All Campus Council of Faculty Senate Chairs (ACCFSC)
Community College Council of Faculty Senate Chairs (CCCFSC)
Vice President of Community Colleges, Erika Lacro
UHPA, Executive Director Christian Fern

Re: Feedback on Proposed Executive Policy - [Faculty "Assigning for purchase" Their Works to Their Students \(Memo linked here\)](#)

We appreciate the communication from your office dated June 15, 2020, and sent to all of the UH System Campus Faculty Senates, but not including individual member Senates of the ACCFSC. This is an official memo from the CCCFSC and therefore should be responded to in writing within 30 days. However, ***this memo SHOULD NOT be construed as official consultation with any singular faculty governance body. Rather, it serves solely as an advisory to the UH Administration from the CCCFSC.*** We, the CCCFSC, expect that the UH Administration and Executive Academic Leadership will consult on the review and development of the academic policy with each of the 7 UHCC Faculty Senates and respond in writing to any feedback submitted by request of the UH System Administration.

This memo is organized into two sections:

1. **In Response to the Process with Which the Proposed Policy was Shared**
2. **In Response to the Proposed Policy - [Faculty "Assigning for purchase" Their Works to Their Students \(Memo linked here\)](#)**

Section 1. In Response to the Process with Which the Proposed Policy was Shared

Through the members of the CCCFSC, and during the AY 2019-2020, the faculty have communicated with the UH Administration on multiple occasions about policy development and review processes. Over the course of the last year, we have made attempts to organize and formalize the policy review communication and processes. This has been to reduce headaches for all parties and ensure that our policy is

consulted on by the individual Senates, the policy development process is fully representative, the policy development and review is broad in scope and accurate in language. Along these lines, we have argued that policies should be evaluated on a cycle to ensure that our decisions are appropriate and implemented effectively. We have asked for our communications to be responded to in good faith.

We imagine some of these issues can be managed and mitigated if we were to follow regular and routine procedures for drafting and reviewing policy, as was recommended by the ACCJC to the UH System 2 years ago. Going forward, we suggest that the system administration takes to heart these ACCJC Accreditation recommendations to:

- Establish a cycle to regularly evaluate and update policies and practices.
- Develop a mechanism to inform the University community about the college governance structure, membership and responsibilities of committees, pertinent policies, and the academic decision-making process.
- Develop and implement an assessment process to measure the effectiveness of role delineations, governance, and decision-making processes to ensure their integrity.

Above all, in order to develop a policy governing academic matters, it requires a process. Most notably, *it requires consultation*. According to [R-20, ROLES AND CONSULTATION PROTOCOLS INVOLVING UH ADMINISTRATION, UH PROFESSIONAL ASSEMBLY, AND UH FACULTY SENATES](#), it appears that this item falls into Part III, 3. PART III: Joint Referrals to Senates or other Shared Governance Entities, and UHPA. The following topics mix academic and employee relations, and will be referred *simultaneously* to both UHPA and the Senates or other shared governance entities, for consultation, with conditions or limitations as noted.

3) Conflicts of interest or commitment, including establishing a canon of ethics, and an effective means of professional maintenance of those ethics, such as faculty self-discipline.

For the record, and as a body,

- We do not operate in the non-duty period, therefore consultation cannot be considered a given during this period.
- We do not consider backchannel communications or forwarded emails in any form as a consultation.
- We do not consider a 15-day window of feedback as a consultation.
- We do not consider communication more than 2 weeks after the proposed policy was shared with UHPA to be appropriate simultaneous consultation.

We also want to thank you for recognizing that *many/most/all of our Faculty Senates do not operate in the summer*. A number of Faculty Senates have requested a stay of review until the Faculty Duty period. This way, our questions and feedback would be representative of our bodies. We appreciate the concern for UHPA and BOR [R-20, Roles And Consultation Protocols Involving UH Administration, UH Professional Assembly, And UH Faculty Senates](#), and [Board of Regents Policy 1.210](#), which directs UH Executive Academic Leadership to consult directly with the 7 individual Faculty Senates of UHCC.

Overall, we would like for UH Administration to recognize the CCCFSC's role is to coordinate efforts and support the voice of the individual Senates. Specifically, and similar to the ACCFSC, we:

- Assist the Faculty Senates, or equivalent organizations, in their role of advising the UHCC Vice President on system-wide academic and governance issues;
- Share information regarding the various campuses and programs of the University of Hawai'i CC System;
- Promote an open, democratic, and collegial discussion of issues of system-wide concern;
- Promote the involvement of faculty at all levels of the UHCC in matters of shared governance and academic policy and planning.

Section 2. In Response to the Proposed Policy - [Faculty "Assigning for purchase" Their Works to Their Students \(Memo linked here\)](#)

It's helpful to see that this request originated in the State Legislature. It's helpful to see what appears to be specifically addressing one poetry text at one Community College. It may be worth noting to the Legislature the great efforts of faculty in the CC system over the course of the last 5 years to adopt "0-cost Textbooks". As an example, Leeward in Fall 2019 has over 400-course sections at zero textbook cost that includes over 7,300 students, or approximately 50% of our courses. One instructor alone has the power to save students \$100,000s of dollars of text costs over a short amount of time, and many do and have done so for years.

So, it's possible that this one cited case or the few cases like it could be managed and mitigated without policy, or, it would seem that it could certainly be handled without the expedited development of policy. Perhaps this could be done in the established conflict of interest form?

This response is not to say there is not a problem, or that we could not, nor should not, address this concern. It would seem that there is some precedent for a policy such as this (thank you for sharing some examples), some support among the faculty, and there are multiple examples of journalism noting these issues from different universities. It seems entirely reasonable that the University consider the value of having a draft policy or adopting one.

What follows below is the collective voice of the Faculty Senates that have been shared. *Again, it should not be construed as official consultation with faculty governance bodies. Rather, it serves as an advisory to the UH Administration.*

UH Institutional Cultural Concerns from Faculty Perspective

- This is a very prevalent common practice, shouldn't the 4-year institutions be a part of this timely discussion?
- Are changing the "culture" or "practices" that have been in place for so long? Is there any evidence that this is a major issue? If so, where is that evidence?
- If policies are consulted on and passed in Summer, are we really a representative voice?
- What if non-instructional faculty speak on behalf of my entire campus?
- Will committees become political problems as some faculty vote against others?
- Is this a matter of academic freedom?
- Ultimately, I think the broader issue is academic freedom. It is the faculty's discretion to evaluate and select their own course texts and materials, so how does this policy address that?
- This policy violates the academic freedom of the faculty member by not allowing her/him to choose her/his own course materials. Contractually, we are entitled to academic freedom.
- Is this an infringement on academic freedom?
- How would you ensure "fairness" in this process (no favoritism/discrimination)
- Is this even legal?

Process Concerns as They Relate to [UHPA/BOR R-20](#) Protocols for Consultation

- Do we have a systematic process for policy development and review?
- The original email didn't go out to all faculty senates, but rather UHPA and the Chancellors.
- Why was the protocol for simultaneous referral, as outlined in [UHPA/BOR R-20](#), not followed?

- What is UHPA's stance and how is this being communicated to the Faculty and Faculty Senates?
- Should we do our due diligence by waiting until Aug. '20 (duty period) to get feedback from "all faculty" before putting this through so quickly?
- At Manoa textbook orders for spring must be submitted by October 1, so why the "expedited review"?
- UH should determine that the issue raised isn't already covered by existing policies and codes of ethics before drafting a new policy.
- I would like to know a little more about the complaint, what the actual problem is that is being addressed, and particularly how widespread it is. I am opposed to developing policies that have a negative impact on the majority of faculty who behave ethically if it is a rare minority that violates ethical standards.
- This policy needs to be put on hold until all faculty are back to work in August so that the 9-month faculty have a chance to review it.

Concerns and Questions Directly Related to the Policy

- With current budget constraints, the library may not be in a position to purchase that many books. What about cost reimbursement from the division program?
- Can faculty be encouraged to donate copies for in-library use (reserve) and loan (general circulation)?
- I have serious reservations about the peer-evaluation process. How will the administration prevent discrimination during the process and ensure fairness?
- Can't we just add a section to the conflict of interest form or policy?
- Is there an issue with donating to UH Foundations?
- Can't a faculty member just be required to place so many textbooks at their campus library, have an OER resource, and also sell their books - not for profit at the bookstore?
- There appears to be a conflict of interest when a faculty member requires students to buy his book. If items F and G in the policy are implemented the faculty member does not profit from the sales and there is, therefore, no conflict of interest. The other points are then not needed. This would avoid the challenge of academic freedom when a faculty authored textbook presents views that are not generally accepted.
- I think the draft policy is a positive step to allow students non-commercial and educational use of published works by faculty. My primary concern is with sections D & E, specifically what is the library's role in acquiring these four (4) copies?

- If said faculty member used university supplied equipment/time to produce the text/materials, I believe the university already takes a cut of any potential 'profit' the faculty member earns?
- Who pays for the two sets of copies in the library is unclear - is it going to be treated as a division responsibility?
- How the faculty member determines what they have to state they 'earned' in order to provide that amount to the UH Foundation is unclear - if this an HI Senate issue, I'm guessing they would expect it to be a sum determined that can be somehow verified to some degree. This could be a big issue as the Senators are probably imagining such a publication is worth far more than what the faculty member actually earned for their efforts.
- The committee approvals by division are an issue for those faculty that have authored something and want to use their own materials if there is already faculty dissension between colleagues of the same discipline/division.
- Regarding the suggested "outside" committee member having an equitable say or decision on a subject matter that they are not an expert in is very concerning. Why would a Science faculty tell a Psychology professor what text or content they should use in their own classroom?
- How will this affect OER where teachers are developing materials to be shared. Is and Should this also now be monitored and approved for content? Same principle if we are looking solely on micromanaging what content an instructor feels is best in his or her classroom.
- Is the real issue about instructors requiring their authored TEXTBOOK (OR) is it the money (profit)? As all hired instructional faculty, being published is supposed to be a positive accomplishment for tenure and promotions
- There is no provision for faculty assigning works that they do not profit from (for example, self-authored/open textbooks).
- There should be no circumstances under which a faculty member is required to donate money to the UH Foundation. I would accept the possibility of a donation to charity instead, but I will oppose this policy as long as the UH Foundation is specified.
- How will an "unreasonable financial burden on students" be determined (2.A)? Who supplies the copies to the library (D-E)? How is the value determined (F)?
- Here is how this policy would negatively affect the copy services that I manage as one of my duties. We regularly copy class notes and other material for Faculty. If the faculty member is organized and prepares all their materials in advance, we encourage them to have us print, bind, and sell the materials through the bookstore at cost. The process treats the class notes like any other textbook and my copy center like any other publisher. We recoup the cost of duplication and the materials are sold for a minimal amount to the student,

usually under five dollars, and the student for that 2 or 3 dollar investment, gets a high quality well printed, well organized set of materials.

- What will happen if an added layer of bureaucracy is put into place that includes justifications and peer reviews is that our faculty will opt not to sell the copies through the bookstore and just print and distribute the materials themselves through our self-service. The quality of the self-copied material is not guaranteed to be of the same standard as what my service would provide. This will have a financial impact on our copy services, which in an era of shrinking budgets and rising costs, will make providing quality services to faculty, and indirectly to our students, that much more difficult. The perception of quality is an important factor in bringing students to us instead of opting for mainland colleges. We fight very, very hard against the misguided perception that Community Colleges are just glorified High School for students too dumb to go straight to University. One of the small ways we do that is by giving our faculty the ability to present classroom materials in a professional manner. This policy would have the unintended consequence of dumbing down the quality of course materials for our face to face classes at my College.
- Would the faculty author be required to provide the books (4) to the Library for circulation and course reserves?
- How will an "unreasonable financial burden on students" be determined (2.A)? Who supplies the copies to the library (D-E)? How is the value determined (F)?
- The proposed policy appears to include the most 'restrictive' or 'burdensome' elements of similar policies at other Universities. The peer review panel is not necessary, as UH institutions already have general processes for ensuring the appropriateness of assigned materials. The issue is resolved as long as faculty are not profiting from the assignment of their works (which could be accomplished through existing policies and guidelines or through the later section of this proposed policy).
- It does appear that this policy would require joint consultation w/ faculty senates and UHPA
- This seems to be addressing an issue on our HonCC campus. I feel that this is a step in the right direction given the population of students that do attend our campus. It seems aligned with the OER initiative. It's unfortunate that this issue could not be handled without the Ethics Commission and Legislators getting involved
- #F If the faculty's books/materials are intellectual property does not seem right (or even legal) to require profits/proceeds to be donated to the University/UH Foundation. "Requiring" a "donation" is contradictory. (VCAA/provost "shall be responsible for "monitoring adherence to this requirement") This sounds more like a requirement for payment! Requiring a percentage (i.e. 10% or 25%) of the

proceeds would be more reasonable in my opinion, but not 100%. Even then, it should be spelled out in the faculty contract.

- Why would it ONLY be okay to use a particular book IF no other books/materials are available? Instructors do not select books based on the fact that "nothing else is available". Instructors select books/materials they deem appropriate for their needs for the course.
- While it may be appropriate to seek some type of statement explaining the relevance/appropriateness (of the book/material) to the course, requiring a justification as to why it is "most appropriate" seems unreasonable. There is a difference between "appropriate" and "most appropriate". The latter places an unfair burden on the faculty member to justify a choice which should be based on academic freedom.
- Again, this heavy oversight seems to infringe upon academic freedom, and could even invite politically motivated decisions (discrimination or favoritism) 2 textbook copies on Reserve and 2 more for borrowing? Most UH libraries (if they have a textbook lending program) only have textbooks on reserve, not for regular circulation (4 weeks) as this prevents other students from having access to the book. Who will be providing these texts? Will the library be required to purchase them or will the faculty or campus provide them at no cost to the library? The library may not always have the budget to purchase 4 textbooks for this purpose.
- This seems unduly harsh and as a result, I don't see why any faculty member would bother to devote the time to create sellable materials for the course.
- First, there is a committee to determine whether the materials are apparently the best out there and that the sale price is reasonable. In no other course do we second – guess the faculty on their choice of materials.
- Who on earth would do this? This completely discourages faculty from even attempting to put in the work to get a de minimis recompense for their time and effort. If the first part of the memo is achieved – the committee that reviews the materials for appropriateness and price – any genuine ethical issues seem to be addressed, and the second part of the memo just looks mean-spirited. I think you also ought to check with the union on this.
- The faculty is required – out of their own funds? – to provide four copies to the library, and then on top of that, is not allowed to keep any of the profits. Under this policy, the faculty will actually be out of pocket and having to provide copies of the books to the library.
- I imagine that there has been abuse. However, this would prevent potential authors from even attempting to write. I give my text to my students for free so it doesn't affect me, but knowing this rule applies may have stopped me from starting. The UHPA Agreement states that what we create belongs to us, not UH, so how can they tell us what to do with it. I'm not sure why a publisher can

make money from our students, while a faculty cannot - what if the motivation is to produce a cheaper text?

- There should be exceptions for amounts less than \$2,000 a year or if all monies are assigned and deposited to a UH Foundation account specifically for a program/department. Essentially, there is no tax liability to the author and school since all monies are paid to the UH Foundation account.
- From AAUP: On professors assigning their own texts to students...The right of individual professors to select their own instructional materials, a right protected under principles of academic freedom, should be limited only by such considerations as quality, cost, availability, and the need for coordination with other instructors or courses. Professors should assign readings that best meet the instructional goals of their courses, and they may well conclude that what they themselves have written on a subject best realizes that purpose. In some cases, indeed, students enroll in courses because of what they know about the professor from his or her writings, and because they hope to engage in discussion with the professor about those writings in the classroom. Because professors are encouraged to publish the results of their research, they should certainly be free to require their own students to read what they have written.
- With students buying used books, how does one determine what profit was realized by the author? Also, if feasible, I would prefer to give the money directly back to students in the form of a purchase coupon or bookstore gift card. Who knows what UH Foundation will do with the money.
- I think most publishers are willing to provide free copies for the library (mine does). I wrote my book to save students money. The book I was using was \$190 in a binder edition (which the bookstore does not buyback). My book costs \$69 new and \$34 used in the bookstore and can be used for two courses. I am scheduled to get royalties twice a year and for the last semi-annual period I received no royalties since the bookstore had enough used copies and didn't order any new books (which was fine with me). Before I wrote my book, I asked students what they thought about my making a profit off my book and they were okay with it if it was going to save them over \$100.
- It seems reasonable to me that the course coordinator and maybe the chair of the department could review and sign off on the faculty member assigning the book to avoid any abuse. I agree with the concerns raised above and have additional concerns about faculty time that would be required if these policies are adopted.
- If 3 tenured faculty have to read and evaluate the text to ensure that it is appropriate for another faculty member's course, this could potentially be a significant time-investment for the faculty tasked with this. Also, if 3 other faculty are not well-versed in that specific topic, they may not be qualified to evaluate the

appropriateness of another text. In addition, who would be responsible for providing copies of the text to the faculty reviewers?

- If faculty members are required to donate their royalties, it seems like the faculty member would have to survey the students to find out who bought the book new and from where (I believe that if you buy directly from the publisher, the royalties are more than if the book is purchased from Amazon, and there are no royalties if the book is purchased used). Students might feel uncomfortable saying whether they bought the book or not and from where. If the faculty member could find out exactly how many books were purchased, they would have to calculate the royalties they made from those books, subtract the tax they owe on those royalties to figure out how much to donate. I know that I do not have time to do that and suspect that other faculty don't either.

Documents that appear associated with or related to the creation of the policy - A relatively quick google search of "Faculty Assigning for purchase Their Works to Their Students" reveals connections to documents that contain the language of this proposed policy. This can help provide some context, as it appears the University has adopted some of the language on the [Proposed Executive Policy - Faculty "Assigning for purchase" Their Works to Their Students \(Memo linked here\)](#).

- Lehman College - <http://www.lehman.edu/academics/documents/draft-comments-on-textbooks.pdf>
- CUNY Policy (1) - http://policy.cuny.edu/policyimport/manual_of_general_policy/article_vi/policy_6.01/5./text/#Navigation_Location
- CUNY Policy (2) - <http://www1.cuny.edu/sites/cunyufs/2016/08/14/facultyassigningtheirowntextbooksthenewcunypolicyresolvesconflicts/>
- AAUP - <https://www.aaup.org/report/professors-assigning-their-own-texts-students>
- Chronicle of Higher Education - <https://www.chronicle.com/article/How-These-Professors-Assign/242580>