

Professor Olivas was interviewed by www.iowawatch.org for an article about paid leave for faculty members while under investigation for misconduct allegations.

Paid Leave Policy for accused UI Faculty mirrors rest of Big Ten

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By **MIKE ANDERSON**
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The University of Iowa has started a review that could lead to a change in its judicial process for professors put on paid leave while under investigation for misconduct allegations.

The university has granted seven such leaves since 2005, including four that are still current, according to Associate Counsel Robert Porter. One of the four involves an assistant pathology professor, who was convicted in district court in October of assaulting his lab assistant but continues drawing his \$93,000 annual salary.

Associate Provost Tom Rice said he has assigned his assistant to do research into how to speed up the faculty judicial process. The assistant has begun to collect and analyze operations manuals from different universities, looking for policies that the UI can learn from.

“That’s the very, very beginning of a possible policy revision,” Rice said. “But it may come to nothing.”

Sunday night, a top Republican lawmaker sharply criticized the policy and said he would seek legislation to change it. Nevertheless, the paid-leave practice for faculty under misconduct investigation is similar to practices of Big Ten universities, according to an IowaWatch examination of those colleges’ operations manuals and interviews with higher education experts. The practice is also common across the country.

“Absent compelling proof of misconduct, legal processes often require universities to suspend people with pay,” according to Prof. Ronald G. Ehrenberg of Cornell University’s Higher Education Research Institute.

But Ehrenberg’s “compelling proof” standard could become grist for critics of the University of Iowa’s practices. Rice’s review comes in the wake of sharp criticism that greeted news reports that the university has granted paid leaves with full salaries and benefits to the assistant pathology professor, Toshiki Itoh, and to Professor Gary Hunninghake after they became the subject of investigations.

In Itoh’s case, authorities had gathered evidence compelling enough to persuade a Johnson County District Court jury in October that he was guilty of physically assaulting his lab assistant. Itoh, has said he would appeal the conviction and is still receiving his salary. He also is awaiting a retrial on a charge that he sexually abused her, a count that hung the jury in the October trial.

Hunninghake was put on leave in April while drawing a salary of \$360,668. Although university police cleared him of a wrongdoing charge they have not revealed, he awaits trial for the separate charge of filing a false police report in Chicago.

The university has not identified the other two faculty members. The salaries for those four have now reached \$461,110, Porter said.

In addition to those four cases, two other professors accused of misconduct committed suicide in 2008 before their cases were resolved.

Incoming House Speaker Pro Tem Jeff Kaufmann, R-Wilton, said in an email Sunday he will propose legislation establishing a process for requiring faculty members to repay salary received during the paid leave if they are convicted of a crime, as Itoh was.

“This, I still believe, should result in the end of taxpayer dollars going to this person now convicted of a crime,” Kaufmann said in an email. “You shouldn’t have to be convicted of all crimes for this to happen. I think assaulting a lab assistant is enough.”

In a recent Iowa City *Press-Citizen* op-ed piece, Kaufmann said, “My position is not denial of due process...this is the infusion of common sense.”

The university’s policies do not explicitly address what should be done in cases where extreme, sometimes criminal, allegations are made. Like other Big Ten schools, the UI places the accused on paid leave till an investigation can be completed. But investigations can be long and expensive, and Rice, the associate provost, said that a better policy might become necessary.

“I think at some point the university would want to review that,” Rice said, adding that the process might take awhile.

Rice said, “We try to review all our university policies on a regular basis.” He noted that the university recently revised policies for harassment, sexual harassment and retaliation.

Paid administrative leave is most commonly used by professors who need to leave the country for research or other professional activities. At the university, these sabbatical type leaves of absence, which also have been criticized by Republican lawmakers, are granted for a maximum period of two semesters and are provided for in the operations manual.

However, the manual provides no paid leave for individuals accused of civil or criminal misconduct. Placing the accused on paid leave with full salary and benefits is standard in the investigative process, according to Moore.

Prof. Michael Olivas, the Bates Distinguished Chair of the University of Houston Law Center, said, “These are not polices that spontaneously arise out of a ‘what if’ situation.” Olivas is a higher education lawyer who held the Mason Ladd Distinguished Visiting Professorship at the University of Iowa Law School in the late 90s.

The lack of an explicit, written policy on paid leave in misconduct cases is not unusual among Big Ten universities.

“The fact that there aren’t policies out doesn’t mean that virtually every other institution wouldn’t do the same,” Olivas said. “You can’t really tell if there’s been a miscarriage of justice until the whole thing plays out.”

The University of Iowa doesn’t place time limits on how long a faculty member under investigation can remain on paid leave, leaving such determinations entirely up to university officials. The common thread is to wait until the conclusion of the investigation, no matter how long that takes.

“It’s very unusual to have a policy,” Olivas said. “Whenever [universities] have one, it’s usually due to a breakdown of the system.”

Olivas recalled just such a “breakdown of the system,” a sexual abuse case at Iowa State University in 1997. The case resulted in the creation of one of the rare paid leave policies for cases of faculty misconduct.

Prof. Michael Simonson was accused of exposing himself to a female graduate student in a hot tub, as well as groping another female graduate student, according to the Iowa State Daily. Simonson was placed on paid leave, an action that resulted in Iowa Supreme Court Case *Simonson v. Iowa State*. The court ruled against Simonson’s claim that he was denied due process when the university placed him on paid leave.

This incident disturbed the Faculty Senate, prompting it to draft a more in depth policy that could address similar situations, according to Paul Tanaka of the Iowa State University counsel office. “Not having anything in our policies was not a good thing,” Tanaka said.

Prof. Michael Owen, Faculty Senate president, said, “We recognized that we had no policy, so that was the motivation to have a policy.”

The result was Chapter 7 of the Iowa State University Faculty Handbook, which provides a step-by-step process that an acting provost is to follow when misconduct allegations arise. While Iowa State’s policy recognizes that officials cannot put arbitrary time limits on paid leave periods, they can expedite the process through use of what the university calls “interim action” and a faculty review board.

Interim actions include placing a faculty member on “partial or total administrative leave with pay.” While the University of Iowa’s standard procedure is to place faculty on paid leave with full salary and benefits, Iowa State rarely suspends the full duties of an accused faculty member.

Its faculty review board is appointed for each investigation and periodically reviews the provost’s interim actions in the case. It decides whether an action should continue, end or be modified to fit the changing circumstances of an investigation.

The faculty review board may even “recommend to the Provost the suspension of salary for the duration of the proceedings,” according to Chapter 7 of the Faculty Handbook. No such option exists at the University of Iowa.

If a faculty member is convicted, his or her plan to appeal certainly factors into the equation, Tanaka said. Nonetheless, Iowa State would follow the general rule that a court ruling is determinant. Criminal cases are decided “beyond a reasonable doubt,” which is a higher standard than any university faculty judicial panel would apply, Tanaka said.

“The institution has an interest in assuring the student and faculty body that something is being done,” Tanaka said.

Iowa State tailored its policy in response to an extreme case of sexual abuse allegations, something that most universities don’t have to deal with on a regular basis.

“The basic problem is that when someone is ‘accused’ of misconduct, it is difficult to suspend them without pay,” Ehrenberg, the Cornell professor, said. “After all, an accusation is not proof.”

Rice acknowledged that the practice is “frustrating” to the public. “It’s frustrating for us,” he said. “It’s a fair process that sometimes very occasionally leads to this sort of thing.”

After a two-year criminal investigation with no end in sight, Itoh’s case will go before a faculty panel, but this still might take a long time. The university has elected to continue his paid leave status because he plans to appeal his conviction. When the allegations were brought against Itoh in July 2008, the university didn’t conduct its own investigation as it typically would, opting to wait for the results of the criminal trial. But that process dragged on much longer than anyone expected and the result from the UI’s perspective was unclear, according to Rice.

“While the university has great concern over the criminal action taken against Dr. Itoh, it is our understanding that the recent misdemeanor convictions are subject to appeal, while a third, more serious charge has been set for trial in 2011,” Moore said in an email.

(Mike Anderson is senior journalism major at the University of Iowa School of Journalism and Mass Communication with a second major in philosophy and a minor in English)