

## Faculty Governance Committee Resolution 20/21-01

The Faculty Governance Committee moves to amend the language of the **Faculty Manual Section 4.IX.A.4.c**. This portion of the FM addresses the standard of evidence to be used in cases of "Dismissal of a faculty member with a tenured appointment, or with a non-tenured appointment before the end of the specified term" as described in **FM 4.IX.A**.

The current language of Section 4.IX.A.4.c is:

*The Faculty Governance Committee shall make it clear to the Hearing Committee that the burden of proof for adequate cause rests with the institution. Such a determination shall be satisfied only by clear and convincing evidence in the record considered as a whole.*

FGC proposes that the Faculty Manual be amended to the following. Changes from the existing language are underlined.

*The Faculty Governance Committee shall make it clear to the Hearing Committee that the burden of proof for adequate cause rests with the institution. Except in those cases involving sexual harassment, as defined by the Faculty Handbook, such a determination shall be satisfied only by clear and convincing evidence in the record considered as a whole. In cases involving sexual harassment, the determination shall be satisfied by the standard of preponderance of evidence in the record considered as a whole.*

### **Rationale**

The Department of Education recently released changes to the Title IX guidelines and is requiring all institutions to implement the changes by August 14, i.e., within this academic year. The specific issue is the standard of evidence used in cases of sexual harassment. In cases involving students, the college's current Title IX standard is "preponderance of evidence." In cases involving allegations of sexual harassment by faculty members, the Faculty Manual (*FM 4.IX.4.c*) states that the standard is "clear and convincing evidence." The faculty standard of "clear and convincing evidence" is a higher standard of review than "preponderance of evidence."

The new Title IX rules require that as of August 14, 2020, faculty and student standards for sexual harassment cases be the same. If there is no change to the Faculty Manual this academic year, then the college will be required to use the higher standard of evidence in cases involving students. This could have the unfortunate consequence of making it less likely that student victims of sexual harassment will bring their cases forward. On the other hand, changing the Faculty Manual to the lower standard of evidence in these cases decreases protections for faculty members.

The Faculty Governance Committee believes it is in the best interests of our students that the standard of evidence in cases of sexual harassment among students be the lower standard of “preponderance of evidence.” Hence, FGC supports changing the faculty standard of evidence in such cases from the higher standard of “clear and convincing evidence” to the lower standard of “preponderance of evidence.” In all other cases, that is, those not involving allegations of sexual harassment by faculty members, the higher standard will remain in place. We particularly support making the change now, as opposed to waiting until next academic year, so as to not add to the burden of any student facing the difficult decision of whether to report a case of sexual harassment at St. Olaf.