

UNIVERSITY REVIEW COMMITTEE

Thursday, March 6, 2014
3 p.m., Hovey 302

MINUTES

Members present: Angela Bonnell, Phil Chidester, Diane Dean, Doris Houston, Sheryl Jenkins, Domingo Joaquin, Bill O'Donnell, David Rubin, James Wolf, Sam Catanzaro (ex officio)

Members not attending: None

Others present: Bruce Stoffel (recorder)

I. Call to order

Chairperson David Rubin called the meeting to order at 3 p.m.

II. Approval of minutes from the February 28, 2014, meeting

Rubin moved, Diane Dean seconded approval of minutes from the February 28, 2014, meeting. Chairperson Rubin declared the minutes approved.

III. Continued discussion: Draft faculty suspension and dismissal policy and procedure

Rubin asked Sam Catanzaro about the status of the draft policy and procedure. Catanzaro responded that the University Review Committee and the Faculty Affairs Committee are reviewing the draft. Catanzaro has not yet met with the Faculty Affairs Committee regarding the draft. That committee is taking more time to review the draft than the chairperson anticipated. Only URC and the Academic Senate Executive Committee have seen the latest version of the document. The president and provost reviewed the first version but have not yet seen the newer one. Rubin asked if the document is to be approved by the Faculty Affairs Committee. Catanzaro explained that by ASPT policy, the URC is specifically charged with developing revisions to the ASPT document, and then submits them to Academic Senate. The ASPT policies do not require that a Senate committee also review them, but the Executive Committee of the Senate may elect to do so upon receipt of the URC's proposal. In the case of this new dismissal policy, the Executive Committee has already asked the Faculty Affairs Committee (FAC) to do so, and then the final version will go to the Faculty Caucus of the Academic Senate. Representatives of the URC can be engaged in discussions with the FAC and the Faculty Caucus. Rubin and Dean thanked Catanzaro for his work on the document and for his responsiveness to committee feedback.

Bill O'Donnell asked if the committee has discussed grounds for dismissal and a definition of malfeasance. He said that he finds references to grounds for dismissal, malfeasance, and harm to be vague in the document, but, perhaps, that has already discussed and is the intent of the committee. Catanzaro responded that the committee has not yet extensively discussed grounds for dismissal. They include unprofessional behavior, inability to continue duties due to illness, and criminal activity, he said. Malfeasance in this context refers to criminal wrongdoing, he added. O'Donnell responded that vagueness of these terms is acceptable to him; he realizes that leaving them vague will allow for flexibility in these matters.

Referring to the Proposed Dismissal Proceedings chart prepared by Martha Horst (see minutes of February 28, 2014, meeting), James Wolf noted that the provost may decide that formal proceedings should take place even if the six-person panel named by Faculty Caucus recommends against formal proceedings. He asked if the provost may decide not to initiate formal proceedings if the six-person panel recommends that formal proceedings should be initiated. Catanzaro responded that it would be the provost's decision in either scenario. It is unlikely that the provost would disagree with the six-person panel if, after considering the provost's initial request to consider formal proceedings, they recommended that such proceedings go forward.

Rubin asked if there are any provisions in the document that address a situation in which the faculty member is not competent to represent himself/herself. Catanzaro responded that the policy allows the faculty member to designate counsel. That could be anyone of the faculty member's choosing and, according to University legal counsel, does not have to be a lawyer. This scenario is one that can be handled on a case-by-case basis, Catanzaro said. Dean added that such an issue would likely be addressed during initial discussions involving the faculty member, chairperson/director, dean, and provost (or designees) as provided for in the document.

O'Donnell suggested that it would be in the faculty member's interest to know there had been disagreement on the six-person panel or between the six-person panel and the provost. That information might help the faculty member frame the case, he said. Catanzaro agreed. He said that the document probably needs to be explicit about communication of that information. Joaquin said that it is important for the faculty member to be advised about the Faculty Review Committee recommendation as well. Wolf asked how a tie vote by the six-person panel would be reported. Catanzaro responded that, while considered a no vote according to Robert's Rules of Order, the actual vote would be reported to the provost. Ultimately, it is the provost's decision, Dean said.

Dean expressed concern that dismissal procedures might be used to remove faculty members who have repeatedly disagreed in committee discussions or with administrators. With the revisions that URC has recommended, such application of the procedures seems unlikely, she said.

Dean said that the process described in the draft document will seemingly work well when a faculty member has been bullied by persons in his/her unit. Catanzaro said, especially for such situations, it is important that provisions are in place to minimize conflicts of interest. For this reason the draft policy precludes participation on the six-person panel formed by Faculty Caucus by a faculty member from the college in which the faculty member's locus of tenure resides, he said.

Rubin asked whether all parts of the faculty personnel file are made available in dismissal case proceedings. Catanzaro responded that personnel files kept in Human Resources, the academic unit, the college, and the Provost's office are considered parts of one personnel file. All parts are open to the faculty member and to authorized University administrators.

Referring to point 6 of the procedure, O'Donnell asked whether a faculty member could legitimately contest the grounds for dismissal communicated by the provost to the faculty member. Catanzaro noted that the charges are to be discussed with the faculty member at the outset of the process. Point 6 relates to informing the faculty member that dismissal proceedings will move to the hearing phase, he said. Wolf suggested that, for clarity, reference in point 6 to a hearing date should be included as a separate paragraph (the sentence beginning "The hearing date should be far enough in advance ...").

Dean asked if it would help to clarify the types of evidence acceptable in dismissal proceedings or if doing so might be too confining to the parties involved. Catanzaro noted that the document provides that FRC is to determine the order of proof at the hearing level. FRC is charged with deciding what evidence will be considered and the manner in which it will be communicated and discussed, he said. Earlier in the process, the six-person panel selected by the Faculty Caucus to recommend whether formal proceedings should be instituted has considerable latitude to request information they want to consider in their deliberations, in addition to the people they will consult and the manner in which their investigation will proceed, Catanzaro added. He suggested including a clause in the document regarding generally accepted standards of evidence, e.g., that hearsay should not be permitted as evidence unless it has been investigated for its legitimacy.

Committee members then discussed the types of evidence that might be permissible and where in the document evidence might be addressed. Doris Houston suggested including the phrase “relevant, verifiable information excluding hearsay,” adding that she cannot imagine how any information that cannot be verified would be considered in dismissal proceedings. Sheryl Jenkins said that the document needs to be clear regarding this matter to protect the faculty member. Clarity is also needed to protect the University against lawsuits, Houston said, and to protect faculty members against bullying, Dean said. Catanzaro consulted the AAUP policy document (“Recommended Institutional Regulations on Academic Freedom and Tenure”) for passages related to evidence. He noted the following passage in part 5.A.13 on page 5 of the document: “The hearing committee will not be bound by strict rules of legal evidence, and may admit any evidence which is of probative value in determining the issues involved. Every possible effort will be made to obtain the most reliable evidence available.” Committee members recommended adding the final sentence of this passage to the document.

Joaquin asked if reports submitted by the six-person panel and FRC to the provost will be made available to the faculty member as well. Catanzaro responded that he will add that to step 4 of the procedure.

Referring to step 8.c.i of the procedure, O’Donnell asked why the document permits FRC to hold a public hearing, given the concern for maintaining confidentiality. Catanzaro noted that the provision is from the AAUP policy document. Dean recommended that the provision be modified to provide for mutual agreement between FRC and the faculty member regarding whether the hearing should be public or private. O’Donnell noted that a faculty member might prefer an open hearing. Catanzaro agreed to make that change.

Catanzaro thanked committee members for their input. He said that he will revise the document accordingly, update the Faculty Affairs Committee regarding changes recommended by URC, and forward the revised document to the provost and the president.

IV. Identification of ASPT sections for spring 2014 discussion

Chairperson Rubin asked committee members to review the ASPT sections recommended by Catanzaro for discussion at the next committee meeting. These include Section XI.A regarding non-reappointment and Section XIII.J regarding the non-reappointment appeal procedure. Catanzaro oriented committee members to these passages in the ASPT policies book and in the tenure and promotion section of the Office of the Provost website (see <http://provost.illinoisstate.edu/faculty/tenure/>). Catanzaro also recommended that the committee consider ways to improve alignment of faculty evaluation and salary review processes within the ASPT policies book.

V. Adjournment

Wolf moved, Houston seconded adjournment of the meeting. The meeting adjourned at 3:58 p.m.

Respectfully submitted,
Angela Bonnell, Secretary
Bruce Stoffel, Recorder

ATTACHMENTS:

Revised Draft Suspension/Dismissal Policy, Sam Catanzaro, March 5, 2014
Memorandum from Sam Catanzaro dated March 5, 2014, updating suspension and dismissal discussion points
Potential ASPT discussion topics (excerpt from February 28, 2014, email from Sam Catanzaro)

Draft Policy: Re-assignment, Suspension, and Dismissal for Cause of T/TT Faculty
[Edits reflect Discussion with University Review Committee and Consultation with Legal Counsel](#)

Definitions:

Reassignment occurs when a faculty member's duties are changed by a department chair/director consistent with ASPT Policies VII and Policy 3.3.6. The faculty member is still fully engaged in academic activities. Chairs/directors may be bound to follow procedures in department/school by-laws when fulfilling their responsibilities for faculty assignments under these policies.

Suspension occurs when a faculty member is temporarily relieved of academic duties. The faculty member could be on paid or unpaid status. [Suspensions ordinarily will be with pay, unless there are extraordinary circumstances.](#)

Dismissal occurs when a faculty member's employment relationship with the University is terminated by the University.

Statement on Recommended Procedural Timelines

Each step in the procedures described below should be completed as soon as is practicable, and normally in the time frame indicated. However, the President or Provost may extend these deadlines for good reason, and concerned parties may request consideration for doing so. The President, Provost, or their designee will communicate extensions of the normal timelines provided below in writing to all concerned parties. Such extensions shall not constitute a procedural violation of this policy.

Faculty Reassignment:

Assignments of faculty to administrative duties are the responsibility of the Chair/Director (Policy 3.3.6). Faculty assignments to administrative duties typically include faculty consultation as part of a process that considers how best to enable faculty to use and develop their expertise and interests in the pursuit of the University's mission (ASPT Policies VII.A and VII.B). Re-assignments of faculty from administrative duties (e.g., program director) can be effected immediately when in the best interest of the department/school. In such circumstances, the reason for the reassignment should be provided to the faculty member. All Department/School governance procedures for making or reviewing such reassignments should be followed when applicable. If necessary, temporary reassignments may be made in the interest of the University.

Faculty Suspension

It is understood that suspension (with or without pay) of faculty members will only be contemplated in circumstances when there is [actual harm and/or](#) a reasonable threat of imminent harm to the University, including the faculty member in question, students, and other employees or when credible evidence of adequate cause for dismissal is available. [Harm might include](#)

actual or potential physical, financial, and/or reputational damage to people, property, and/or the University, including disruption of the University's ability to conduct its business.

The administration of the University will inform the faculty member of its rationale for judging that suspension is indicated.

Faculty members may be suspended for a specified time period, or with conditions that must be met prior to reinstatement, or as a preliminary step toward dismissal for cause (see below).

A Faculty member in the suspension process is afforded due process. This right is balanced against the University's responsibility to prevent harm to students, other employees, and the institution itself.

Procedure

1. There shall be discussion between the faculty member, the Chair/Director, the Dean, and Provost (or their designees). The intention of this discussion will be to develop a mutually agreeable solution that ensures safety for the University community and educational success of students. This mutually agreeable solution could result in a suspension or a re-assignment as defined above.
2. While discussion is ongoing, the University reserves the right to temporarily re-assign a faculty member from any or all duties, including teaching, in order to prevent harm to the University or members of its community.
3. If a mutually agreeable solution is found, it shall be documented in writing signed by the faculty member and appropriate administrative officers of the university. A mutually agreeable solution should be finalized within 5 business days of initiation of discussion. However, if the parties mutually agree in writing, this period may be extended if such extension would make agreeing to a solution likely. Such an agreement will be communicated to the Dean and Provost within 5 business days of the initiation of discussion.
4. If a mutually agreeable solution cannot be found and the administration-Provost or designee determines that suspension is necessary, then the following process will take place.
 - a. The Chair/Director will consult with DFSC/SFSC. Such consultation will entail informing the DFSC/SFSC of the incident(s) that are of concern and the reasons why suspension is indicated. Such consultation will include review of relevant documentation/information (e.g., past performance evaluations; investigation report) and/or advice of Legal Counsel.
 - b. There shall be documentation of the consultation with the DFSC/SFSC. The elected members of the DFSC/SFSC may make a non-binding advisory recommendation to the Chair/Director. Consultation with the DFSC/SFSC, documentation of such, and any recommendations made by the DFSC/SFSC,

must be completed within 5 business days.

- c. Following DFSC/SFSC consultation, the Chair/Director shall consult with the Dean and Provost and provide written notice of a decision to the faculty member, Dean, and Provost within 2 business days. The DFSC/SFSC shall be informed of the decision. If the reasons for the suspension also constitute adequate cause for dismissal as described below and in ASPT Policies XI.B.1, the written notice shall so indicate, and the dismissal procedures delineated below shall commence.
5. A suspended faculty member may appeal to the President within 5 business days of the written notice from the Chair/Director, as described in 4.c above. Such appeal must be made in writing, with copies provided to the Chair/Director, Dean, and Provost. Appeals may be based on substantive or procedural grounds. The President shall rule on the appeal within 5 business days.
6. Suspended faculty members shall retain their right to file a grievance with the Faculty Academic Freedom, Ethics, and Grievance Committee, if they believe that their academic freedom or the Code of Ethics has been violated. Suspensions will remain in effect while such grievances are adjudicated.
7. Faculty members who are suspended as a preliminary step toward dismissal for cause will retain their right to due process throughout the dismissal proceedings, which shall follow the principles and steps described below.

Dismissal of Tenured Faculty for Cause and Revocation of Tenure

ASPT Policy V.C.3 provides for initiation of dismissal proceedings by the DFSC/SFSC. University Administration may also initiate dismissal proceedings when it becomes aware of an adequate cause.

ASPT Policy XI.B.1 includes but is not limited to the following examples of adequate causes: lack of fitness to continue to perform in the faculty member's professional capacity as a teacher or researcher; failure to perform assigned duties in a manner consonant with professional standards; and malfeasance.

Termination of faculty due to financial exigency or program termination will follow the process outlined in the ISU Constitution (Article III, Section 4.B.2) and all applicable policies.

Procedure:

1. If the recommendation to initiate dismissal proceedings comes from the Department, School, or College, the DFSC/SFSC (per ASPT V.C.2) or Dean of the College in which the faculty member's locus of tenure resides will submit a letter to the Provost describing charges that the University has adequate cause to effect dismissal of the faculty member.

If the recommendation to initiate dismissal proceedings comes from the University Administration, the Provost will inform the faculty member in writing of the charges and

provide the Dean and DFSC/SFSC with a copy. In such cases, the DFSC/SFSC may choose to communicate, in writing, a non-binding advisory recommendation to the Provost on the matter. [Such communication is made at the discretion of the DFSC/SFSC.](#)

If a faculty member being charged with adequate cause for dismissal is suspended as described above, the due process for suspension will be followed while dismissal proceedings are underway.

2. The Provost will direct, in writing, the Faculty Caucus of the Academic Senate to select a committee of six faculty members to determine whether, in its view, formal proceedings for the faculty member's dismissal should be instituted. This written direction shall be made within 5 business days of date of the letter from the DFSC/SFSC or Dean. The committee will consist of one faculty member from each college except that in which the faculty member's locus of tenure resides. The Faculty Caucus shall meet in executive session within 10 business days of the date of the Provost's written direction to select the committee members.
3. The committee will review each charge contained in the letter alleging adequate cause, and will have the authority to interview the respondent/faculty member, the Dean, the Department Chair/School Director, and any other person who may have relevant information.
4. The committee will submit their recommendation within four calendar weeks of the date of the formation of the committee.
5. If the committee recommends that dismissal proceedings should commence, or if the Provost, even after considering a recommendation favorable to the faculty member, determines that a proceeding should be undertaken, a statement of the grounds proposed for the dismissal should be jointly formulated by the committee and the Provost or Provost's designee. If there is disagreement, the Provost or the Provost's designee shall formulate the statement. The statement shall be formulated within 5 business days of the committee's communication of the recommendation to the Provost.
6. The Provost shall communicate in writing to the faculty member: (1) the statement of grounds for dismissal; (2) information regarding the faculty member's procedural rights; and (3) a statement informing the faculty member that, at the faculty member's request, a hearing will be conducted by the Faculty Review Committee (FRC) of Illinois State University to determine whether he or she should be removed from the faculty position on the grounds stated. This communication to the faculty member shall be delivered within 5 business days of the date of the statement. The hearing date should be far enough in advance to permit the faculty member to reasonably formulate and prepare a defense, and at least 10 business days from the date of the Provost's letter communicating the decision to the faculty member.
7. The faculty member should state in reply no later than five business days before the time and date set for the hearing whether he or she wishes a hearing. If a hearing is requested,

Comment [c1]: I considered the suggestion of providing the faculty member the option of requesting a committee member from his/her own College. Implementation would be problematic because we have two Colleges that do not have Departments/Schools, so their faculty would be systematically excluded from this option. The faculty member has the right to request a faculty member from their College to be interviewed by the Committee (see provision 3).

the faculty member shall answer the statements in the Provost's letter in writing and submit this document to the Provost and the FRC not less than five business days before the date set for the hearing.

8. The Faculty Review Committee (FRC):
 - a. Shall consider the statement of grounds for dismissal already formulated and the faculty member's response before the hearing;
 - b. If the faculty member has not requested a hearing, the FRC may consider the case on the statement of grounds and the reply and any other obtainable information and decide whether the faculty member should be dismissed.
 - c. If the faculty member has requested a hearing, the FRC shall hold a hearing:
 - i. The FRC shall decide whether the hearing is public or private;
 - ii. If facts are in dispute, testimony may be taken or other evidence received;
 - iii. The Provost or ~~a~~ designee shall attend the hearing;
 - iv. The FRC will determine the order of proof, and may secure the presentation of evidence important to the case;
 - v. The faculty member shall have the option of assistance from counsel or other advisor, whose role shall be limited to providing advice to the faculty member rather than presenting or actively engaging in the proceedings;
 - vi. The faculty member shall have the assistance of the committee in securing the attendance of witnesses. Because the committee cannot compel the participation of a witness, the proceedings shall not be delayed by the unavailability of a witness.
 - vii. The proceedings will be video- or audio-recorded at the expense of the University;
 - viii. The Provost's ~~representative or designee~~ and the faculty member shall present any information helpful to the determination orally or in writing. Each may request the committee in writing to ask witnesses to answer specific questions. Appropriate procedure will be determined by the FRC.
 - ix. The FRC shall permit a closing statement ~~and closing~~ by the Provost's ~~representative or designee~~ and the faculty member. Such statement may be orally or in writing.
 - x. The FRC may request written briefs by the parties.
 - d. The FRC shall reach its decision promptly in conference, on the basis of the hearing if one was held, and submit a full written report to the Provost and the faculty member. The written report shall be submitted to the Provost within 10 business days of the hearing. A record of any hearing should be made available to the Provost and to the faculty member.

Comment [c2]: The University would never pay for the cost of private counsel. In the event of exoneration, an individual could pursue compensation via a civil lawsuit.

9. The Provost shall review the full report of the FRC for final action. If the Provost disagrees with the decision of the FRC, s/he shall request the FRC to reconsider the report. The Provost shall then make a final decision whether the faculty member should be dismissed. The Provost's final decision shall be communicated to the faculty member within 5 business days of the final report of the FRC (after reconsideration, if any).
10. The faculty member may appeal the Provost's decision to the President, who shall make a final decision, stating whether the faculty member shall be retained or shall be dismissed. Such appeal shall be requested in writing to the President within 5 business days of the date of the Provost's communication of the final decision. The President shall review the full report of the FRC and may consult with the Provost or other, including the faculty member, as necessary. The President shall communicate a decision to the faculty member, the Provost, Dean, Chair, and DFSC/SFSC within 15 business days of the written request for appeal.
11. Except for such simple announcements as may be required, covering the time of the hearing and similar matters, public statements about the case by either the faculty member or administrative officers should be avoided so far as possible until the proceedings have been completed. Announcement of the final decision should include a statement of the FRC's original decision, if this has not previously been made known.

Comment [c3]: Clearer process for appeal to President and more time for thorough review.

TO: University Review Committee

FROM: Sam Catanzaro

RE: Discussion of Draft Policy on Suspension and Dismissal of Tenured Faculty

DATE: March 5, 2014

Thanks again for your ongoing thoughtful discussion of the draft policy on Suspension and Dismissal of Tenured Faculty.

Due to the revisions, I ask that the updated draft Policy be provided to the President and Provost for review once more, before the Committee votes on it.

This list below updates the discussion points and questions summarized in my memo of February 14.

1. How does "threat of harm" get determined? Would Faculty-Staff Threat Assessment Team be involved?

As we discussed on February 28, determinations of "harm" would utilize existing university resources, such as the FSTAT, as required by the particulars of the case. Because these are rare events and each will have unique circumstances, it seems best to leave the policy worded generally.

2. More precise specification of what is meant by "harm" or the categories of "harm"
See revision of the first paragraph under "Faculty Suspension," pp. 1-2.

3. Under what circumstances might there be suspension without pay?
See the sentence added to the definition of Suspension, p. 1.

4. References to "the administration" in the Suspension section:
On p. 2 Step 4 under "Procedure," the "Provost or designee" is identified.

5. If the suspended faculty member were exonerated, would any withheld salary be reinstated?
Because salary would only be withheld in extraordinary circumstances, this will be handled on a case-by-case basis.

6. Make clear that "dismissal" implies revocation of tenure
See edit to heading of the Dismissal section.

7. Non-binding recommendation from the DFSC on initiating dismissal proceedings is not as clear as it could be.
Paragraph 2 of Step 1 of Dismissal Procedure (pp3-4): Sentence added clarifying that the DFSC is not required to make a recommendation if they would rather not.

8. Dismissal proceedings step 2: Allow faculty member the option to have a member of his/her College on the committee determining whether proceedings should commence.

See comment on revised version of policy. Briefly, there would be challenges to equitable implementation across all Colleges, and the goal can be achieved by the the committee interviewing individuals with relevant information (see step 3).

9. Faculty have a right to counsel if there is a hearing before FRC--at whose expense? If at faculty's expense, would it be reimbursable?

The University never provides compensation for privately hired counsel. The policy refers to "counsel" in the general sense: It need not be a hired lawyer. See comment on revised version of policy.

10. Clarify the nature of "recording" of hearing before FRC

Explicit statement that the recordings be audio or video.

Excerpt from a February 28, 2014, email from Sam Catanzaro to the University Review Committee regarding potential ASPT discussion topics

We also touched on beginning the review of ASPT policies for the next major revision. The timeline working back from the target for the next version is:

- Next version will become effective January 1, 2017 (five years from effective date of current version).
- Approval of next version required during calendar year 2016 (preferably in Spring 2016).
- URC forward its recommended revision to Academic Senate/Faculty Caucus in Spring 2015.
- URC needs to start review this Spring 2014 and continue into Fall 2014.

I suggest that the following three topics are worthy of particular attention:

1. The procedures for non-reappointment in Section XI.A were expanded, as summarized in the Provost's memo on this section of August 14, 2012. Most of this is new, and it seems to be working well. Nonetheless, as the University gains experience with these expanded procedures, we might learn ways to refine them if necessary. One specific concern is that these new procedures need an explicit timeline, which should be added to the Calendar in Appendix I.

2. Section XIII on Appeals was revised considerably, for the better, in the last major revision. Because some of this section is new, it is important to review it carefully, and I would highlight:

- a. Ensurement of full alignment of Sub-section D (Nature of Formal meetings and Appeals to CFSC) with the specific types of appeals in Sub-sections F, G, H, and I.
- b. The new non-reappointment appeal procedure, summarized in the Provost's memo on Section XIII.J of August 14, 2012. This is another new procedure that needs an explicit timeline and should be added to the Calendar in Appendix I.

3. Consider whether there can be improved alignment between the following:

- a. Section V.C, describing the DFSC's role in faculty evaluations
- b. Section VIII, on Annual Performance Evaluation
- c. Section XIII, on Performance Evaluation and Salary Review

The two memos of August 14, 2012 have been distributed as hard-copy inserts and also are available at: <http://provost.illinoisstate.edu/faculty/tenure/>

Of course, the entire document should be reviewed. In addition to these particular areas, I am developing a list of items for possible clarification based on the questions that have arisen over the past few years and will be distributing this list to the committee later this semester.