University of Washington
Faculty Council on Faculty Affairs
June 5th, 2018
11:00 a.m. – 12:00 p.m.
Odegaard Undergraduate Library 320

Meeting Synopsis:

1. Call to order
2. Review of the minutes from May 22nd, 2018
3. Faculty Code rewrite / faculty disciplinary processes – Zoe Barsness (Chair, Senate Committee on Planning and Budgeting)
4. Good of the order
5. Adjourn

1) Call to order

The meeting was called to order at 11:00 a.m.

Janes reminded the council the meeting would end at noon. He noted FCFA’s Class A legislation concerning faculty lecturer issues is currently in the process of being voted on by university voting faculty.

2) Review of the minutes from May 22nd, 2018

The minutes from May 22nd, 2018 were approved as amended.

3) Faculty Code rewrite / faculty disciplinary processes – Zoe Barsness (Chair, Senate Committee on Planning and Budgeting)

Zoe Barsness (Chair, Senate Committee on Planning and Budgeting) was present to discuss an ongoing initiative for revision of the Faculty Code pertaining to university faculty disciplinary processes. She used two handouts as part of her presentation (Exhibit 1) (Exhibit 2). Barsness explained a review of the current faculty disciplinary processes has been launched by Faculty Senate leadership this academic year and will continue into the next. She explained it is likely that legislation that comes out of the initiative to amend the Faculty Code around faculty disciplinary process will be forwarded to FCFA for review when completed, and the council may be asked to sponsor.

   Overview

It was noted the last time these sections of the Faculty Code outlining faculty disciplinary processes were seriously overhauled was nearly 30 years ago. Members of the Senate Leadership felt it is an appropriate time to reevaluate and recommend revisions.
Barsness explained a preliminary evaluation showed that while the university’s processes for faculty adjudication are well-defined, there is a lack of resolution processes/strategies in place before the adjudication stage. It was noted adjudications are legalistic, complicated, and often drawn-out processes. Exhibit 1 was highlighted. It was noted one idea under deliberation is to encourage parties to exhaust interest-based solutions before more formal adjudication procedures are used.

**Initiative committee structure**

A Steering Committee for the initiative co-chaired by Barsness and Mike Townsend (Secretary of the Faculty) with membership consisting of administrators from numerous related UW offices/agencies meets regularly each quarter to act as the final sounding board for ideas relating to the initiative. The Values & Principles Committee is made up mainly of faculty members, but also includes deans, the Ombud, and others in its membership. It meets to discuss underlying principles to be reflected in final recommended Code language, and primarily focuses on identifying design questions for reworking of these systems, as well as discovering shortcomings, paint points, and challenges within the current system. The Drafting Committee is responsible for authoring the rewrites to related sections of the Faculty Code, and is made up of members of the Advisory Committee on Faculty Code and Regulations, the Ombud, and other members. It was noted the drafting phase of the initiative is now beginning and will continue through the summer (2018).

An aggressive timeline will see the legislation (Class A) move through rounds of review during academic year 2018-2019.

**Questions**

A member commented that in development of substantive legislation such as this, garnering input/buy-in from populations that are likely to be differently affected is traditionally a best practice. He recommended the initiative be more broadly vetted, even outside of the traditional Senate review processes. Barsness agreed and noted the initiative is attempting to do this. She urged members to contact her if additional stakeholder groups are identified.

A member recommended that RCW Chapter 18.130 Regulation of Health Professions — Uniform Disciplinary Act be considered during development of changes. He also noted that agencies that sponsor UW research may have their own set of misconduct rules that might also be considered.

A member noted he believes the timeline is optimistic, and urged that the work be carried out carefully, with timeline as an afterthought. He asked that the initiative’s committees consider steps to educate chairs, deans, and other dual faculty-administrators and account for the preparation of faculty in understanding these processes.

Barsness was thanked for presenting and she left the meeting.

4) Good of the order
Members were thanked for their work during the academic year.

Janes explained a search is currently on for the chair of FCFA for the next year (2018-19); he noted he will be leaving to act as Vice Chair of the Faculty Senate.

5) Adjourn

The meeting was adjourned at noon.

Minutes by Joey Burgess, jmbg@uw.edu, council support analyst

Present: Faculty: Steve Buck, Joseph Janes (chair), Aaron Katz, Purnima Dhavan, Dan Jacoby, Tom Hazlet, Miceal Vaughan, Jacob Vigdor, Kurt Johnson
Ex-officio reps: Judith Henchy, Bryan Crockett
President’s designee: Cheryl Cameron
Guests: Mike Townsend, George Sandison

Absent: Faculty: Eric Bugyis, Gordon Watts, Kamran Nemati, Margaret Adam
Ex-officio reps: Ziyan Bai, Bryan Crockett

Exhibits
Exhibit 1 – facultydisciplinaryprocesses_1.pdf
Exhibit 2 – facultydisciplinaryprocesses_2.pdf
FACULTY DISCIPLINARY SYSTEM REVIEW FRAMING/DESIGN QUESTIONS

MOTIVATING VALUES & PRINCIPLES

- Who do we aspire to be as colleagues? As a community?
- How do we build the social and institutional capacity to be that way?
- When folks stumble, how do we resolve disputes and help/support them and their communities to grow in health and well-being?
- Our practices, processes and procedures should facilitate parties’ ability to identify and implement solutions first, impose formal discipline as needed second.
- We want to facilitate—whenever possible—early intervention, exhaustion of interest-based processes first in service of promoting interest-based outcomes.
  - Current standards, practice and dispute resolution/disciplinary approaches don’t encourage us to exhaust least costly, community oriented, interest-based approaches before escalating to a rights-based procedure (i.e., adjudication).
  - Currently, if dispute resolution is not easily facilitated, there is early migration to, and over-reliance on, legalistic approaches and procedures.
- We want to avoid such a degree of process that we can’t achieve a just result.
- Whatever we do, we must be consistent, transparent and equitable.
- Academic Freedom and Academic Integrity are core foundational principles

LEGAL PERSPECTIVES, PROCESS PATHWAYS & CONSTRAINTS

Governing Legal Framework:

- Which broader legal frameworks apply (e.g., WAPA, Civil Servants code)?
- To which particular procedures or pathways do they apply?
- Where do we have degrees of freedom? What is the breadth of that freedom to determine our own processes, procedures and approach?

Process & Procedures Design:

- What type of Alternative Dispute Resolution (ADR) ladder do we establish?
  - Do the four dispute type buckets require the articulation of four different processes within our one code?
  - Initial conception of our current Dispute Resolution System was to have three processes:
    - Mediation/conciliation
    - Brief Adjudication Procedure (BAP)
    - Full Adjudication Procedure
  - Our current system has 5 procedures:
    - Mediation/conciliation
    - Brief Adjudication Procedure V1 (25-71 cases)
    - Brief Adjudication Procedure V2 (Chapter 28 with Hearing Officer)
    - Full Adjudication Procedure
    - Research Misconduct Procedure as stipulated in EO61
  - What should our ladder/buffet of procedures look like?
    - Should 25-71 be a separate disciplinary procedure?
      - In practice it has been so, but should it be so going forward?
• Mediation is one way of dealing with these types of disputes, but 25-71 has morphed into plea bargaining, so it’s challenging to return to mediation focus after this mindset has been established.

• Are parties required to exhaust interest-based/lower level dispute resolutions processes first before recourse to brief (BAP) or full adjudication procedure? Can such an approach apply in Title IX type cases?
  o How required is mediation?
  o If we have mediation, how is it provided?
    ▪ In-house, if so where? Should mediation processes be outside of any one department or School structure to assure that mediated outcomes and processes are seen as neutral (provided at school/college/campus level or through Ombud)?
    ▪ Outside UW (e.g., hire outside mediators)?
    ▪ The extent to which the process is also part of the larger UW community might be valuable to insure fairness and equity.
  o If we have mediation, do we also provide option of mediation with advisory opinion?
  o If mediation with advisory opinion is offered, who provides opinion?
    ▪ Hired mediators?
    ▪ Hearing officers?

• How do we encourage early intervention (i.e., when dispute still in bucket #1) and more fully support processes in Buckets 2 & 3 & 4?

• How do we build timeliness into ladder?
  o Assure there is room to move quickly and greater fluidity between types of processes.
  o Off ramps need to be to decisions NOT back to cycling through the full process

• What should the dispute triage process be?
  o Do we leave folks to self-sort?
  o Or do we have a gatekeeping function?
    ▪ If we have a gatekeeping function, who is the gatekeeper (i.e., who determines where on the ADR ladder the dispute is initially engaged)?
  o What are the dispute resolution pathways given different types of dispute?
    ▪ What process is required when?
    ▪ What does the flow of through and across procedures look like?
  o What are the dispute resolution pathways given different statuses or ranks or roles (e.g., TT ladder faculty, WOT)?
    ▪ Who has access to which processes? What level’s or protection/process do different types of faculty have?
    ▪ Are certain types of sanction unavailable given roles/etc.
    ▪ E.g., the code right now lays out elaborate processes if you are tenured faculty where this isn’t the case if you’re WOT faculty, less protection currently if you are WOT or Lecturer ranks (e.g., in grounds for removal)
    ▪ Does everyone deserve, regardless of their track the full adjudication process in case of dismissal?
    ▪ What’s legal requirement? (e.g., Arichi decision)
    ▪ What’s required/wanted given our values & principles?
  o What triggers escalation up the ADR ladder?
    ▪ Who facilitates/makes that decision?
    ▪ How is that escalation effected?
    ▪ In what timeframe?
Who does the fact finding?
- Are there some instances that faculty do the fact finding or is the faculty role in the process reserved just to discipline/outcome determination?
- UCHIRO currently does the fact finding. It often takes too long. (e.g., 7 months rather than the 60 days provided for in the code)
- How do we involve faculty with a full redo of the work already done?
- Extent to which we need checks and balances without a pro forma duplication of steps?

What level of process is required prior to administration of discipline?
- Does law require a full adjudication or can a brief adjudication process (BAP) be used? Is this dependent on the possible disciplinary outcome? (see Arichi decision)
- Can you meet our some sort of discipline and follow up with a post disciplinary review?
- Or, must there be a full process, up to including appeal, before discipline can be administered (e.g., dismissal, home assignment, reassignment of teaching)
- Are there any instances in which action is take prior to review given other concerns, such as safety (e.g., in Title IX disputes)
- May depend on type of discipline assigned

Adjudication Panel:
- Do we need a sitting adjudication panel?
  - Would this require that panel Members time be “bought out” or that they be paid?
  - Could emeritus faculty serve on such a panel, or provide a pool of panel member resources to assure greater timeliness?
- What precisely can a panel do? What sort of things can a faculty panel order or award?
  - Just a reset? Reconsider case and include specific evidence
  - What can be ordered? What relief can be granted?
    - Can a panel give their own determination of merit or award a promotion
    - Dictate recourse to Provost/president
    - Is panel limited to directing disputants back to a particular process? (e.g., negotiated settlement either in form of a plea bargain or assigning a particular disciplinary outcome)
- What sort of oversight of UCHIRO does the panel have?
- When faculty is going after a university official? What can a panel order an official to do?

To what extent should the President be involved at the end of the process?
- All currently end up on President’s desk at end of the appellate process
- Student conduct code has removed the President from the appellate process, should we do likewise in the Faculty system? (note this was as a consequence of reading of the WAPA)

What happens when someone has multiple breaches or violations across dispute category “buckets”? Does the most serious breach or violation dictate the dispute resolution approach adopted?

What levels of notification of disciplinary action are required (e.g., discipline for sexual harassment)?
- What information is required to be shared?
- With whom is it required to be shared?
- Within which timeframe must be shared,
- For what duration must it be shared?
- Are there conditions that go with the discipline? (e.g., no assignment to study abroad or leading a lab).
Discipline/Sanction Questions:

- Menu/buffet of actions/outcomes available?
  - What sanctions would be available under the non-mediated procedures/processes?
- Timing/criteria to meet before discipline can be imposed?
- Does a process attach to specific categories of outcomes (e.g., possible suspension or dismissal requires full adjudication in the Student Conduct Code)
- We should have fairly explicit criteria for firing someone (non-renewal or firing with cause), is this true across ranks and hiring conditions (e.g., TT versus WOT or NTT faculty)
- How can we minimize the use of process as punishment

Implementation Issues/Concerns

- Adjudication panel
  - Do we need a standing adjudication panel?
  - Do we need buyouts or pay for time of members on the adjudication panel?
- Extent to which you have intervention at an early stage where do you have training come from? Who should be doing that training?
- Training for those with formal roles/responsibilities
  - Chairs
  - Deans
  - “Bosses” (e.g., lab supervisor)
  - Hearing officers
  - Panel members
  - SecFac
- Education/Communication
  - General faculty
  - Codes of conduct
  - System/resources available
  - Rights/responsibilities of participants and those with specific roles/responsibilities within the system
Motivating Values for Faculty Disciplinary Code and Dispute Resolution Systems

<table>
<thead>
<tr>
<th>COMMUNITY VALUES</th>
<th>DISPUTE RESOLUTION PROCESSES</th>
<th>DISPUTE OUTCOMES</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Clear</td>
<td>Efficacy</td>
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<tr>
<td></td>
<td>People know what to expect</td>
<td>Seek to achieve resolution at the lowest level of dispute intervention possible</td>
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<td></td>
<td>Processes are understandable and navigable</td>
<td>Strive to address all parties’ concerns</td>
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<td></td>
<td>Equitable</td>
<td>Alignment &amp; Consistency</td>
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<td></td>
<td>Equal access to process for everyone</td>
<td>Outcomes are aligned/consistent with community values as well as the values of the appointing academic unit</td>
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<td>Processes and procedures are conducted in a consistent and uniform manner across time, disputes and institutional units</td>
<td>Accountability</td>
</tr>
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<td>Processes are neutral/lack bias:</td>
<td>Decision makers are responsible for exercising their roles with integrity, in a manner consistent with the faculty code and our community values and are responsible for the consequences associated with implementing decision outcomes.</td>
</tr>
<tr>
<td></td>
<td>o No person or group is singled out for discrimination or ill-treatment</td>
<td>Community members are held responsible for their behaviors and outcomes.</td>
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<td></td>
<td>o Provide protections for all community members regardless of status or power (e.g. tenure/non-tenure track faculty, faculty of different rank, staff, students, etc.)</td>
<td>Proportionality</td>
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<td></td>
<td>Fair</td>
<td>A range of disciplinary actions is available</td>
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<td></td>
<td>Assures appropriate levels of due process</td>
<td>Disciplinary action matches the presenting transgression and considers relevant history</td>
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<td></td>
<td>All appropriate parties are included in the process</td>
<td>Appointment, promotion and merit outcomes match responsibilities and performance expectations</td>
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<td>Parties are treated with dignity, courtesy, and respect</td>
<td>Accuracy</td>
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<tr>
<td></td>
<td>Mechanisms are available for fixing mistakes</td>
<td>Decisions are based on accurate and available information</td>
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<td></td>
<td>Transparent</td>
<td>Educational</td>
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<tr>
<td></td>
<td>Relevant information is shared with appropriate parties in a timely manner</td>
<td>Decisions are shared to assure broad understanding of community values, expectations and norms</td>
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<tr>
<td></td>
<td>Decision making process and criteria are communicated; parties know:</td>
<td>Opportunities for learning, reconciliation and grace are provided as appropriate (e.g., decision outcomes promote a culture that creates space for people to make honest mistakes and come back from them)</td>
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<td></td>
<td>o What is happening, when;</td>
<td></td>
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<td></td>
<td>o The outcome received;</td>
<td></td>
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<td></td>
<td>o Why decision outcome occurred</td>
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<tr>
<td></td>
<td>Ethical</td>
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<td></td>
<td>Norms of professional conduct are not violated</td>
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<tr>
<td></td>
<td>Timely</td>
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<td></td>
<td>Seek to address disputes at earliest point of intervention possible</td>
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<td></td>
<td>Disputes are resolved as quickly as practicable given the nature of the dispute and dispute resolution procedure employed</td>
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</tbody>
</table>
## Dispute Types & Current Approaches

<table>
<thead>
<tr>
<th>Areas</th>
<th>Bucket #1</th>
<th>Bucket #2</th>
<th>Bucket #3</th>
<th>Bucket #4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Broad Types</td>
<td>Interpersonal Conflict</td>
<td>The “In-Between”</td>
<td>Violation of Standards</td>
<td>Work Performance &amp; Professional Advancement</td>
</tr>
<tr>
<td>Specific Example</td>
<td>Faculty work relationships with fellow faculty, leadership, staff, students and trainees etc.</td>
<td>Related to Buckets 1 &amp; 3 but details may be nebulous and/or context dependent. Types are too numerous to describe here.</td>
<td>Faculty member made sexually charged comments toward and then touched a graduate student who had previously made it clear she wasn’t interested</td>
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<tr>
<td>Applicable written policies, standards or code (within UW)</td>
<td>Principles of Conduct for UW Community EO 31, 51, 54</td>
<td>Principles of Conduct for UW Community EO 31, 51, 54</td>
<td>Principles of Conduct for UW Community EO 31, 45, 51, 54, 57, 61</td>
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<td></td>
<td>Faculty Code: Chapter 24, 27</td>
<td>Faculty Code: Chapter 24, 25, 27, 28 [Note: 25-71 = “Standard of Conduct”] Workplace Violence Policy, Domestic Violence Policy (APS 11.7)</td>
<td>Faculty Code: Chapter 24, 25, 27, 28 [Note: 25-71 = “Standard of Conduct”]</td>
<td></td>
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<tr>
<td>Offices/Entities likely to be involved:</td>
<td>Chair, Dean</td>
<td>Chair, Dean</td>
<td>Provost</td>
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<tr>
<td></td>
<td>Ombud</td>
<td>Ombud/Conciliation</td>
<td>Academic Personnel/HR</td>
<td></td>
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<tr>
<td>Add'l Offices/Entities that may be involved</td>
<td>Academic Personnel/HR, Colleagues, POD, Sec Fac, Provost, Graduate School, Student Life</td>
<td>Academic Personnel/HR</td>
<td>Provost</td>
<td></td>
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<td></td>
<td>UCIRO, Title IX, Safe Campus, Colleagues, Sec Fac, Provost, Office of Research Misconduct Proceedings, Graduate School, Student Life</td>
<td>Ombud/Conciliation, Safe Campus, Office of Research, Graduate School, AG’s Office</td>
<td>Academic Personnel/HR</td>
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<tr>
<td>Goals/Interests</td>
<td>Education and reconciliation; reduction of disruption; promotion of community health and well-being; early intervention; mitigates/reduces fear of retaliation; training for faculty, chairs and deans</td>
<td>Education and reconciliation; ensuring health and safety; reduction of disruption; promotion of community health and well-being; upholding university policies and standards; commitment to exhaust interest-based approaches before recourse to formal grievance/discipline procedures; early intervention</td>
<td>Upholding university policies and standards, safeguarding academic freedom and integrity; ensuring health and safety; assuring timely, clear, equitable, fair and transparent and ethical procedures; imposition of proportional discipline; mitigating/reducing institutional risk; taking appropriate corrective action</td>
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<tr>
<td>Approaches Used</td>
<td>Facilitation</td>
<td>Interest-Based</td>
<td>Rights-Based procedures</td>
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<tr>
<td></td>
<td>Interest-Based</td>
<td>(and with advisory opinion) Rights-based procedures</td>
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</tbody>
</table>

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**Add'l Offices/Entities that may be involved**

- Academic Personnel/HR, Colleagues, POD, Sec Fac, Provost, Graduate School, Student Life
- UCIRO, Title IX, Safe Campus, Colleagues, Sec Fac, Provost, Office of Research Misconduct Proceedings, Graduate School, Student Life
- Ombud/Conciliation, Safe Campus, Office of Research, Graduate School, AG’s Office
- Ombud/Conciliation, Colleagues, AG’s Office

**Goals/Interests**

- Education and reconciliation; reduction of disruption; promotion of community health and well-being; early intervention; mitigates/reduces fear of retaliation; training for faculty, chairs and deans
- Education and reconciliation; ensuring health and safety; reduction of disruption; promotion of community health and well-being; upholding university policies and standards; commitment to exhaust interest-based approaches before recourse to formal grievance/discipline procedures; early intervention
- Upholding university policies and standards, safeguarding academic freedom and integrity; ensuring health and safety; assuring timely, clear, equitable, fair and transparent and ethical procedures; imposition of proportional discipline; mitigating/reducing institutional risk; taking appropriate corrective action
- Education and mentoring; upholding university policies and standards, safeguarding academic freedom and integrity; assuring timely, clear, equitable, fair and transparent and ethical procedures; assuring fair and equitable personnel decisions; taking appropriate corrective action

**Rights-Based procedures**

- Rights-Based procedures (and with advisory opinion)