

University of Washington
Faculty Council on Faculty Affairs
Tuesday, February 8, 2011, 9:00 a.m.
142 Gerberding Hall

Meeting synopsis:

1. Review of Minutes
 2. Lecturer-related revisions to Faculty Code
 3. Scientific Misconduct issues
 4. Adjournment
-

Call to Order

Council Chair Rich Christie called the meeting to order at 9:05 a.m.

Review of Minutes

The notes of the January 25, 2011 meeting were approved as written.

Lecturer-related revisions to Faculty Code

Review of Peer Institutions

Christie presented a survey of promotion processes at peer institutions [Attached – Appendix A]. He noted that the process at the University of Connecticut, where a department head... “shall annually appraise the status of each faculty member eligible for promotion, tenure, and reappointment in his or her department; [and] shall include for consideration for promotion and/or tenure all those who request in writing that they be considered” was closest to his preference.

Promotion Consideration Language

The council returned to consideration of promotion language in section 24-54 of the Code. Christie presented a document outlining potential changes, along with three basic principles under consideration: a mandatory promotion case must go forward; eligible faculty members should be reviewed for readiness even if it is not a mandatory case; and a full promotion case must be prepared if an eligible candidate insists.

In the course of discussion, the council looked at a number of potential changes [Attached – Appendix B]. Christie noted pros or cons of various options:

- The current working draft [A] does not provide for counseling to eligible faculty members
- The simplest change for lecturers [B] does not reflect current practice, for many good reasons, including the work load involved and fact that many promotion cases wouldn't go forward
- The proactive department pre-review [C] provides a benefit of counseling, which could be useful to more aggressive junior faculty that may not recognize the consequences of not succeeding in a formal promotion case. On the other hand, this counseling could be a burden on the chair – but the phrase “shall ensure” allows for delegation and flexibility

No consensus was reached, though council members keyed on [E] as containing features that reflected the desired general principles. Discussion then turned to whether *all* faculty should be counseled annually, including affiliate and clinical faculty, and whether any distinctions should be made in the code. No consensus was reached, and the discussion was tabled.

Scientific Misconduct Issues

Christie introduced four adjudication issues related to scientific misconduct [Attached – Appendix C], that were the salient issues from the Advisory Committee on Faculty Code and Regulations report to SEC. He said that the FCFA role is bringing these issues to the administration and making Code changes as necessary to produce consistency. If an executive order needs to be changed, the faculty governance process needs to communicate that.

Briefly commenting on the issues at hand, Christie said that one practical issue regarding decanal punishment could be a routine action that is viewed as punitive (e.g., office reallocation, teaching schedule changes), that there could be a need for an explicit requirement to inform parties of their rights, and that there is already provision in the Code for a process to appeal a Presidential decision to the Board of Regents. He said that issues 1, 2, and 2a would take up the bulk of the time on FCFA.

Adjournment

The meeting ended at 10:30 a.m.

Minutes by Craig Bosman, Faculty Council Support Analyst. <cbosman@uw.edu>

Present:

Faculty: Christie (Chair), O’Brien, Phillips, Vaughn, Wilcock
President’s Designee: Cameron
Ex Officio: Nordquist
Guests: Marcia Killien, Rebecca Drieling

Absent:

Ex Officio: Anderson, Fauchald

Survey of Promotion Processes

Rich Christie
Feb 2011

I have surveyed promotion processes at a few of the University of Washington's peer institutions, with the results provided below. First is a set of notes on the data, followed by tables summarizing the survey, followed by detailed prose summaries.

1. Notes to Survey

The institutions surveyed are from the UW "Global Challenge Peer State Institutions," being flagship state universities with a Medical School. They were obtained from the Office of Institutional Studies web site,

<http://www.washington.edu/admin/factbook/OisAcrobat/peers.html#anchor1>

(in May 2009. I am reusing a list I used for Senate restructuring)

They are:

- University of California, Davis
- University of California, Irvine
- University of California, Los Angeles
- University of California, San Diego
- University of Colorado, Boulder
- University of Colorado, Denver with Health Sciences
- University of Connecticut with School of Medicine and Dentistry
- University of Maryland at College Park and at Baltimore
- University of Massachusetts at Amherst and at Worcester
- Rutgers University with University of Medicine and Dentistry of New Jersey
- University of Virginia

I have so far looked at California, Colorado, Connecticut and Maryland.

2. Summary

Exact details can be found in the source documents, all available on the Web.

University of Connecticut requires the department head to "shall annually appraise the status of each faculty member eligible for promotion" etc. and requires a promotion process if the faculty member requests one.

The University of Maryland places the onus on the faculty member to request a promotion review.

The University of California system vests the department chair with the authority to decide whether to start a promotion case. This is not what we want.

The University of Colorado, both campuses, devolves the P&T process to departments.

3. Detailed Results

a. University of Washington

Web Reference: <http://www.washington.edu/faculty/facsenate/handbook/Volume2.html>

Present wording: §24-54 preamble “Each member of the faculty below the rank of professor shall be considered annually for possible promotion. The procedure described below shall be followed.”

What’s wanted is a “screening” process where candidates with cases unlikely to succeed can choose not to have a full workup.

b. University of California, Davis

UC Davis is part of the University of California system, where promotion is governed system-wide, see the UCLA discussion.

c. University of California, Irvine

See UCLA discussion.

d. University of California, Los Angeles

Web Reference: <http://www.apo.ucla.edu/facultyhandbook/3.htm>

This seems to be a summary rather than specific regulations. There is a pointer to specific regulations. The summary says

“The procedures through which decisions on academic promotion are made are very clearly defined. The following is a summary of the process by the Council on Academic Personnel (CAP):

1. Department informs individuals eligible for promotion
2. Department prepares the dossier”

etc.

The specific reference is to a University of California (i.e. UCal statewide) academic personnel manual,

Web Reference: <http://www.ucop.edu/acadadv/acadpers/apm/apm-220.pdf>

This states:

“220-80 Recommendations and Review: General Procedures

The statements in this section set forth general procedures applicable in circumstances described in each of the five following sections (APM - 220-81 through 220-85).

a. Formal considerations of appointments and reappointments, merit increases, appraisals, non-reappointments, and promotions are normally initiated by the department chair, after appropriate consultation with members of the departmental faculty. For actions affecting the chair, the vice chair, the Dean or Provost, or an appropriate officer may take the initiative.”

So basically the chair is given wide latitude to decide whether a case should go forward or not. A little further on the chair is advised

“Special attention shall be given to ending dates of all appointments of Instructors and Assistant Professors,”

and

“The chair has an obligation to consider the interests of both the candidate and the University, and to see to it that the departmental review is fair to the candidate and rigorous in maintaining University standards.”

This is not useful to us.

e. University of California, San Diego

See UCLA discussion.

f. University of Colorado, Boulder

Web Reference: https://www.cusys.edu/policies/policies/A_Standards-Tenure-Promotion.html

Devolves the exact procedure for promotion and tenure to departments (“primary units”).

g. University of Colorado, Denver with Health Sciences

Uses same faculty handbook as UC Boulder.

h. University of Connecticut with School of Medicine and Dentistry

Web Reference: provost.uconn.edu/ptr/pdf/PTR_Procedures_2010-2011.pdf

“

The Department Head:

- shall annually appraise the status of each faculty member eligible for promotion, tenure, and reappointment in his or her department;
- shall include for consideration for promotion and/or tenure all those who request in writing that they be considered;
- shall obtain a minimum of four letters from external referees who are experts in the individual's field or a related scholarly field, at least two of whom are chosen from a list of at least five referees suggested by the candidate and at least two chosen from a list of at least five suggested by the Department Head and/or the Departmental PTR Advisory Committee;
- shall obtain any information requested by the Departmental PTR Advisory Committee from such sources as the Dean of the Graduate School and Directors of the regional campuses, centers and institutes, and shall make it available to the Committee;
- shall follow prescribed procedures (see **Section II** below). “

i. University of Maryland at College Park and at Baltimore

Web Reference: <http://www.faculty.umd.edu/policies/>

“4. A tenure-track or tenured faculty member may request a formal review for tenure or promotion.”

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Promotion Language

Rich Christie

r. 2 Feb 7, 2011

1. Mandatory case must go forward
2. otherwise, review for readiness, then candidate makes a decision
3. Case must be prepared if candidate insists

Current language (24-54):

“Each member of the faculty below the rank of professor shall be considered annually for possible promotion. The procedure described below shall be followed.”

Proposed Language:

[A] Current working draft:

Each member of the faculty who is eligible for promotion shall be afforded the opportunity to be considered annually for possible promotion. If a faculty member’s promotion decision is mandatory, a promotion review shall be conducted following the procedure below. Otherwise, the faculty member may request that a promotion review be conducted following the procedure below.

[B] Simplest change for lecturers.

Each member of the faculty eligible for promotion shall be considered annually for possible promotion. The procedure described below shall be followed.

[C] Proactive department pre-review

Each member of the faculty who is eligible for promotion shall be afforded the opportunity to be considered annually for possible promotion. If a faculty member’s promotion decision is mandatory, a promotion review shall be conducted following the procedure below. Otherwise, the department chair (or appropriate administrator) shall ensure that the faculty member is counseled regarding readiness for promotion. The faculty member may then request that a promotion review be conducted following the procedure below.

[D] Simpler redraft of [A]

Each member of the faculty who is eligible for promotion shall be afforded the opportunity to be considered annually for possible promotion. At the request of the faculty member, or if the promotion decision is mandatory, a promotion review shall be conducted following the procedure below.

[E] Simpler redraft of [C]

Department chairs (or the chair’s designee or the dean of an undepartmentalized school or college or the dean’s designee) shall ensure that the each faculty member under their supervision who is eligible for promotion is counseled annually regarding readiness for promotion. If the faculty member so chooses, or if the promotion decision is mandatory, a promotion review shall be conducted following the procedure below.

[F] Faculty Request Only

Each year, the procedure below shall be followed for each member of the faculty eligible for promotion who requests a promotion review, and for all mandatory promotion decisions.

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Adjudication Issues related to Scientific Misconduct

Rich Christie
r1 Feb 7, 2011

Summary of Issues

Based on conversation with JW Harrington and SEC documents.

1. Interaction of the informal dispute resolution process in the faculty code with the formal reporting requirements in EO 61 for OSI, and secondarily UCIRO. Interaction with Federal Regulation.
2. Ability of the Dean to assign punishment.
 - 2a. Requirements to inform faculty of their rights, especially of appeal to adjudication. (This is an example of an added issue being identified).
3. Need for a process to appeal a Presidential decision to Board of Regents.

Expanded Information

1. Interaction of the informal dispute resolution process in the faculty code with the formal reporting requirements in EO 61 for OSI, and secondarily UCIRO. Interaction with Federal Regulation.

Here we ask, what is the process, according to the code, when someone wants to report a case of scientific misconduct.

The process starts in 25-71B, where the Department Chair is charged offering a meeting with the accused and accusers to attempt an informal resolution of charges. Implicit is that any reported charged should come to the Department Chair. However, a misconduct charge might be reported first to the Dean or to OSI.

25-71C permits the dean, department chair or faculty member (presumably, the accused) to initiate the conciliatory process at any time. (This effectively requires mutual consent of all parties.)

25-71D says that the dean (to whom, presumably, the case is kicked if the department chair gets nowhere), if the case is serious (Q: can we envision a case of scientific misconduct that would not be serious enough to warrant dismissal? Sexual harassment?)

the Dean must do one of three things:

- a. For discrimination or sexual harassment, request an investigation by UCIRO.
- b. For scientific misconduct, refer to EO 61
- c. Otherwise, form a three member committee to investigate, and may then drop the case.

After UCIRO, or after EO 61, or after the local investigation, pursue adjudication.

EO 61-1 says, among other things

“The OSI shall be responsible for compliance with reporting requirements established by the various federal and other funding agencies in matters of scientific or scholarly misconduct.”

Does this mean that all scientific misconduct allegations have to be reported to OSI, whether substantiated or not? What if the Dean decides the case is not serious? Then the 25-71 process does not reach the point where it is referred to OSI.

Reporting:

EO 61-4 says

“Allegations of scientific or scholarly misconduct are to be made in writing and submitted to the Office of Scholarly Integrity (OSI). The OSI shall inform the dean of the school or college of the allegation.”

According to 25-71, EO61, and thus OSI, is not reached until the Dean determines that the allegations are serious. However, EO61 contemplates a direct report of misconduct to OSI.

Investigation:

EO61-4 continues “Upon receipt of a written allegation, the OSI, in consultation with the dean of the school or college, shall initiate an inquiry into the allegation. The OSI shall first discuss the matter with the party raising the issue. Thereafter, the OSI shall inform the respondent that an allegation of misconduct has been made, provide that person a copy of the written allegation, and explain in detail the process for addressing allegations of scientific or scholarly misconduct.”

This would seem to cut out the chair’s informal settlement process and the Dean’s assessment of seriousness in 25-71, if the person reporting the incident happens to decide to report to OSI.

Question: What should actually happen? Should all reports of misconduct be directed to OSI? Should this be clarified in 25-71?

It appears that OSI’s pre-investigation investigation, detailed in further parts of section 4, supplants the Dean’s decision as to seriousness in 25-71. In particular, OSI is given the authority to determine whether an investigation is needed, while the Dean is just consulted.

OSI-5.B.1 requires the Dean to bring an adjudication on a finding that scientific misconduct has occurred, independent of the level of penalty, i.e. if any level of further action is required. This is more restrictive than 25-71, but falls into the Dean’s discretionary ability to file adjudication for lower levels of punishment (or, consistent if we think the Dean must file adjudication for all punishment).

OSI’s level of notification of the Feds is when an investigation occurs. From this we conclude that no notification would be required if allegations of misconduct were settled by the informal process before reaching OSI. Oddly, I think this means that if the Dean decides there is misconduct that warrants a minor penalty, and the initial report was not made to OSI, then there would be no report to the Feds. Which seems wrong.

Confidentiality:

EO 61 promises confidentiality to persons making accusations of scientific misconduct. 25-71 is silent on the topic. There appears to be a real danger that a well-intentioned chair could violate the EO 61 promises while attempting an informal resolution of the issue under 25-71. In particular, by inviting the accuser to meet with the accused, without informing them that the meeting is optional and they have a right to confidentiality, or by revealing the name of the complainant to the accused while discussing the issues informally.

2. Ability of the Dean to assign punishment.

25-71 (Standard of Conduct) D states:

D. If a mutually agreeable resolution [of an alleged violation of a rule or regulation – rc] is not achieved under Subsections **B** or **C** of this section [informal process, and conciliation process - rc], and if the dean (after consultation in the case of a departmentalized school or college with the department chair and the faculty member) determines that the alleged violation is of sufficient seriousness to justify consideration of the filing of a formal statement of charges that might lead to dismissal, reduction of salary, or suspension for more than one quarter, he or she shall follow one of the following procedures: [leading to adjudication – rc].

What does this mean in terms of the Dean's ability to impose punishment? The Code Cops (mostly Miceal Vaughn) say that

28-32A (extract): "If [after the Dean files a report of reasonable cause to believe a faculty member violated rules and regulations - rc] the Provost believes such reasonable cause exists, then, before taking any disciplinary or punitive action against such faculty member, the Provost shall initiate an adjudication for resolution of such charges..."

prohibits the Dean from imposing punishment without adjudication, unless the faculty member consents to the punishment.

I think that 28-32A is not reached unless the Dean files a report of reasonable cause. 25-71D requires the dean to file such a report for punishments over the limit. The Dean may also file a report for punishments under the limit, but is not required to do so. The implication I see is that the Dean is permitted to impose punishment under the limit without adjudication. The faculty member can then appeal that judgment to adjudication.

Comment: The difference is subtle but real. In case 1, the Dean proposes punishment. If the faculty member does not consent, the Dean must file the adjudication case and carries the burden of proof, while the faculty member enjoys the benefit of reasonable doubt. In case 2, in the faculty member chooses to appeal, the faculty member carries the burden of proof, the Dean gets reasonable doubt.

Comment: There may not actually be an unconditional right to appeal. The Dean must be accused of violating procedure or doing an injustice that affects the "terms, conditions, or course of employment" of the faculty member. The administration interprets this phrase much more narrowly than the faculty. So, hypothetically, the Dean could decide in some outrageously unfair way that a faculty member is guilty and impose a minor punishment that does not affect salary, and the faculty member could not appeal. Or, section 25-62 provides a right of appeal for any impairment of "academic freedom or employment rights". That's still not an unconditional right of appeal of punishment imposed by a Dean.

Question: Regardless of what the language presently says, should Deans be able to assign minor punishments such as a letter of reprimand or suspension for one quarter (with salary, presumably) without pursuing adjudication?

If so, should an explicit appeal be allowed?

Should a list of permitted punishments be promulgated (as I think is the case for student academic misconduct) to limit the Dean's options?

2a. Requirements to inform faculty of their rights, especially of appeal to adjudication. (This is an example of an added issue being identified).

The Faculty Code has no requirement for parties to the dispute resolution process to be informed of their rights, including their rights of appeal or confidentiality. There is at least one anecdotal report of a Dean intentionally deleting information about the appeals process from written communications with a faculty member. This seems inconsistent with the proprieties we expect from justice systems. At the same time, a "Miranda Warning" reading of rights would seem likely to have a chilling effect on informal dispute resolution processes. So:

Should the Faculty Code require that faculty be informed of their rights?
When should they be so informed, and what rights do they have?

My opinion: In general, I would say that when a formal investigation commences, by UCIRO or by OSI, or when a Dean files charges for adjudication, or when a Dean realizes that the case is serious enough that any of these events might happen, then rights should be read. Parties should always be informed of appeal rights when an adverse decision is rendered. Beyond rights to appeal and confidentiality (where appropriate), the rights are essentially those in the Miranda warning, right to remain silent and right to representation, although I do not think the University can bear the burden of providing representation to faculty.

Note: When I was investigating academic misconduct, I had to read rights to students before asking them questions about the case.

3. Need for a process to appeal a Presidential decision to Board of Regents.

Initial position – This is already in the code. Specifically,

28-32.B (extract):

B. A faculty member may initiate an adjudication under this chapter ... for resolution of a dispute which falls within one or more of the following categories:

...

3. Cases in which the petitioning faculty member alleges an injustice resulting from decisions, actions, or inactions of any persons acting on behalf of the University in an administrative capacity and affecting the terms, conditions, or course of employment of the faculty member by the University. ...

and

28-61.C:

C. Any order of a hearing panel in a case where the President is a party in the case shall become a final decision of the University unless either party files an appeal to the Board of Regents ...

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