

University of Washington
Faculty Council on Faculty Affairs
Tuesday, April 5, 2011, 9:00 a.m.
142 Gerberding Hall

Meeting synopsis:

1. Announcements
 2. Review of Minutes
 3. Senate Restructure Cleanup
 4. Scientific Misconduct issues
 5. Adjournment
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Call to Order

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

Announcements

Christie announced that the faculty code changes related to lecturer and instructor issues had passed the Senate Executive Committee and would be moved on to the Faculty Senate.

Review of Minutes

The minutes of the March 8, 2011 meeting were approved as written.

Cleanup Issues Related to Senate Restructure

Christie said that with a year of experience with the new Senate restructure and elections, some issues have been identified. He noted that the Secretary of the Faculty asked FCFA not to move on the issues until she could attend a meeting, but he referred to a document detailing issues he'd seen, including alternate delegates, SEC Faculty Council chair elections, failures to nominate, special elections, and SEC nominations [**Attached – Appendix A**].

In the brief discussion that followed, points brought up included: responsibility for the nomination of candidates and "districting", and the conduct of elections, has devolved to the colleges; failure to nominate is the colleges' problem to fix; in the new SEC, compared to the old one, there isn't a specific constituency for SEC members; the quality of discussion in the new SEC has gone up, and the senators on the SEC say more, a consequence of the nomination process; and the new Senate has featured more discussion and less of a "show".

The discussion was to continue at the next meeting with the participation of the Secretary of the Faculty.

Scientific Misconduct Issues

Christie said that over the last three meetings, questions have been distilled and discussed with the council, and the code of federal relations has been reviewed. In conjunction with this, the council is somewhat handicapped because of the difficulty of finding somebody uninvolved in ongoing litigation to represent the administration's viewpoint.

Wilcock asked if relevant executive orders could be revised as well, if changes were to be made to the faculty code. Christie said that last time, both were issued simultaneously and intended to be coordinated. He envisions a similar process this time, wherein revisions to the faculty code are drafted and suggested executive order revisions are made at the same time.

The council began to discuss issues as listed in Christie's document Adjudication Issues related to Scientific Misconduct [**Attached – Appendix B**].

1. *Informal Process: Should an allegation of scientific misconduct skip the informal resolution process in 25-71B and be reported directly to OSI?*

Christie said that at present, the code asks parties in dispute to try to resolve informally. But in the case of scientific misconduct, the stakes are far higher, and failure to properly handle a dispute can cause an interruption in all federal funding. The council discussed the question at hand, with points made in favor of informal dispute resolution and cautions made regarding reporting requirements, whistleblower protection, and legal liabilities. No consensus was reached.

2. *Scope: Does the UW faculty want the rigorous process of EO 61 to be applied to all misconduct proceedings, or only those required by Federal Regulations?*

The council concurred that the process of EO 61 should be applied to all misconduct proceedings.

3. *Allegation Credibility: Should there be a step in EO 61 to determine credibility of allegations of misconduct prior to start of inquiry?*

Christie read from EO 61, Section 4, which includes the language “The OSI may obtain the assistance of the University Complaints Investigation and Resolution Office (UCIRO) in determining the validity of the allegation. Dependent on the nature of the discipline and the accusation made, it may be necessary for the original databooks or other laboratory materials to be examined and retained to ensure the accuracy of the original record.” He said that for him, it’s not clear enough. Huber added that it needs refinement and a faculty voice.

Cameron said that the process applies to students, faculty, and staff accused, and specified that this was talking about the inquiry phase. When you get to the investigation phase, there is a panel. Here, there is advice sought depending on the nature of the allegation that is presented, and faculty are routinely involved in that.

Christie chronicled the process, referencing the fourth paragraph of EO 61, Section 4, which states that an inquiry precedes an investigation. There was a discussion of when EO 61 should apply – student work, class work, etc. It was pointed out that the faculty code discusses when it would apply as related to EO 61, but EO 61 doesn’t specify just faculty.

No consensus was reached on the main question.

The council reached an agreement that EO 61, Section 4 should say “allegations of research misconduct” rather than “scientific or scholarly misconduct” in order to properly address the intended scope.

Adjournment

The meeting ended at 10:20 a.m.

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

Present:

Faculty:	Christie (Chair), Wilcock, Huber, Ricker, Bryant-Bertail
President’s Designee:	Cameron
Ex Officio:	Anderson

Absent:

Faculty:	Phillips, O’Brien, Vaughn
Ex Officio:	Drieling, Fauchald

Cleanup Issues Related to Senate Revision

Rich Christie – March 31, 2011

Introduction

With a year of experience operating under the new Senate election rules, some minor issues that may require cleanup have been identified. These are:

1. **Alternate delegates for Senators:** There is some desire among the faculty to have alternate delegates who can attend the Senate when the elected Senator is not able to attend. Should this be permitted? How should delegates be determined? Election, appointment, and if so by whom? What authority should delegates have, to vote, to speak? (The Senate meeting is open, so anyone can attend.)

My view: No alternate delegates, no change.

2. **SEC Faculty Council Chair elections:** The Code provides for nomination of three Faculty Council chairs for voting membership on the SEC, but does not provide for the Senate electing them! Oops.

My view: Change 22-63C as follows:

C. At a regular Senate meeting prior to the end of the academic year, the Chair of the Senate, with the approval of the Executive Committee, shall publish in the agenda for that meeting the name of at least one eligible nominee for each ~~at-large elected~~ Executive Committee position. Additional nominations may be made from the floor. An electronic vote will follow within one week of that meeting. The nominee receiving the highest number of votes for a position is elected. In the event of a tie, any untied nominees are eliminated and electronic ballots shall be cast again.

3. **Failure to Nominate:** The code has no guidance for when a college council fails to find nominees.

My view: Relevant code 22-47:

C. The election process shall conform to the following principles:

1. The ballot shall include, for each position, the name of at least one eligible nominee who has agreed to serve if elected.

2. Faculty eligible to vote for a position shall be advised of the date(s) of the election and the name(s) of the nominee(s) at least one week prior to the vote.

3. The ballot shall include provisions for writing in any candidate.

4. Votes for ineligible candidates shall be discarded.

5. The eligible candidate(s) receiving the highest number of votes cast is (are) elected.

6. Ties shall be resolved by a run-off election between the tied candidates.

7. Elections shall be completed and the results reported to the Secretary of the Faculty at least two weeks before the Senate Executive Committee meeting that precedes the final regular Faculty Senate meeting of the academic year.

D. The elected faculty council shall inform the Secretary of the Faculty of the names of elected senators, and the terms to which they were elected.
(Code fragment ends)

On reflection, I would like to keep the "shall" find nominees language and let the college councils thrash out what to do when they fail. Pragmatically, they can just send a ballot without a nominee and have a write in election, or delay an election until they have a nominee.

4. **Special Elections:** The provision on vacancies is too restrictive in permitting special elections only when a Senator resigns. Senators can leave office in other ways.

My view: Change 22-48 as follows:

Section 22-48 Vacancies in the Senate

If an elected senator vacates a Senate position prior to the last regular Senate meeting of the term to which the senator was elected becomes vacant, the elected faculty council of the position's school, college, or campus may conduct a special election to fill the remainder of the term for that position. The election shall conform to the principles in Section 22-47, Subsection C.

(Note, this will help resolve the nomination problem.)

5. **SEC Nominations:** The first SEC nominating committee complained that the job was too hard, but had no suggestions to improve things.

My view: No change.

Adjudication Issues related to Scientific Misconduct

Rich Christie
r2 March 31, 2011

Summary of Issues

Based on conversation with JW Harrington, Advisory Committee on Faculty Code and Regulations review and review of 42 CFR Parts 50 and 93, Federal Regulations for HHS treatment of scientific misconduct.

1. Informal Process: Should an allegation of scientific misconduct skip the informal resolution process in 25-71B and be reported directly to OSI?
2. Scope: Does the UW faculty want the rigorous process of EO 61 to be applied to all misconduct proceedings, or only those required by Federal Regulations?
3. Allegation Credibility: Should there be a step in EO 61 to determine credibility of allegations of misconduct prior to start of inquiry.
4. Dean's Authority: Should the Dean be able to assign minor disciplinary actions (punishment) without referring the case to the Adjudication process.
5. Faculty Rights: Should there be a requirement for administrators to inform faculty and other persons of their rights, especially of appeal to adjudication? What other rights to faculty have, when accused of misconduct?
6. Appeal of Misconduct Finding: Should faculty be able to appeal a finding of scientific misconduct?
7. Appeals Process for Presidential Decisions: Is the process for appealing a Presidential decision to Board of Regents adequate?

Expanded Discussion

1. Informal Process: Should an allegation of scientific misconduct skip the informal resolution process in 25-71B and be reported directly to OSI?

The present dispute resolution process starts in 25-71B, where the Department Chair is charged with offering a meeting with the accused and accusers to attempt an informal resolution of charges.

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, if the case is serious, and involves scientific misconduct, must refer to EO 61.

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’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 and the Federal Regulations promise 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.

My view: The seriousness of an allegation of scientific misconduct, together with the Federal expectations of confidentiality for the accuser and reporting requirements, appear to militate strongly for a requirement in 25-71 that all allegations of scientific misconduct, or, more broadly, scholarly misconduct, be referred immediately to OSI. There may then be a need for a similar requirement for allegations of harassment and UCIRO.

2. Scope: Does the UW faculty want the rigorous process of EO 61 to be applied to all misconduct proceedings, or only those required by Federal Regulations?

My view: It is easiest to have one process for all misconduct issues, and good to treat all scientific misconduct with the same rigor, without regard to funding source.

3. Allegation Credibility: Should there be a step in EO 61 to determine credibility of allegations of misconduct prior to start of inquiry.

The Federal Regulation section 93.201 defines an allegation as ANY report of misconduct to any institutional official, including oral reports. 93.307 requires an inquiry for ANY allegation that is credible. (The inquiry is where people start taking hard disks away, etc.)

EO 61 requires OSI to initiate an inquiry for ANY allegation. The language in EO 61 implies but does not require that the inquiry first find that the allegation is valid, and permits measures such as taking custody of research materials independent of any determination of validity. It seems likely that EO 61 should be revised to require an explicit determination of credibility of an allegation before commencing an inquiry, with its attendant disruption.

4. Dean's Authority: Should the Dean be able to assign minor disciplinary actions (punishment) without referring the case to the Adjudication process.

There is disagreement about whether the Faculty Code permits a dean to assign some disciplinary penalties without the need for an adjudication process. Relevant code:

25-71.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] [emphasis added – rc].

and

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...” [emphasis added – rc]

The question of what the code currently means is less important than the question of what the faculty and administration want it to mean. If the dean may not take disciplinary or punitive action, the bold statement in 25-71D should be removed. If the dean can take such action, this should be explicitly called out in 25-71D.

My personal recommendation is that the dean be given a limited list of actions that can be taken without adjudication (all subject to appeal to adjudication).

5. Faculty Rights: Should there be a requirement for administrators to inform faculty and other persons of their rights, especially of appeal to adjudication? What other rights to faculty have, when accused of misconduct?

The Faculty Code, EO 61 and the Federal Regulations are silent concerning informing accused faculty of their right. However, we live in a society that expects authority to advise accused persons of their rights. When I was investigating student academic misconduct, I had to advise students of their rights prior to asking question. I think it's obvious that accused should be advised of their rights.

What rights do accused faculty have? Since misconduct is not a criminal investigation, I do not think they have a right to remain silent. They do have a right to representation, as discussed in the code, but they have to pay for any representation themselves. Do they have a right to face their accusers? To be informed of charges? To see the entire case made against them? To appeal decisions of misconduct, prior to any determination of employment action?

6. Appeal of Misconduct Finding: Should faculty be able to appeal a finding of scientific misconduct?

There may not presently be an unconditional right to appeal in the Faculty Code. An administrator 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, an administrator could decide in some outrageously unfair way that a faculty member is guilty of misconduct, and the faculty member could not appeal because the decision does not (yet) affect the terms, conditions or course of employment. Section 25-62 provides a right of appeal for any impairment of “academic freedom or employment rights”, but this does not obviously cover misconduct findings.

7. Appeals Process for Presidential Decisions: Is the process for appealing a Presidential decision to Board of Regents adequate?

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 ...

DRAFT