

Minutes*

**Academic Freedom and Tenure Committee
Friday, September 27, 2013
10:00 – 12:00
238A Morrill Hall**

Present: Carl Flink, Karen Miksch (co-chairs), Phil Buhlmann, Arlene Carney, Jerry Cohen, Barbara Elliott, Teresa Kimberley, Gary Peter, Scott Petty, Paula Rabinowitz, Nicole Scott, Nathan Shippee

Absent: David Born, William Craig, Brad Karkkinen, Jessica Larson

Guests: none

[In these minutes: (1) tenure policy section 12 procedures; (2) education abroad policy changes; (3) technical changes to the tenure policy; (4) policy on college personnel plans]

1. Tenure Policy Section 12 (Programmatic Change) Procedures

Professor Miksch convened the meeting at 10:00 and began by providing the context for the Committee's discussion of proposed procedures for section 12 of the tenure policy. There are two areas on which Committee attention has been focused. One, Vice Provost Carney and Professor Kimberley have been thinking about whether it makes sense for probationary faculty members to have the same remedies as tenured faculty in the case of programmatic change. Two, while section 12 is specific on what happens in the case of programmatic change or program closure, programmatic change is not defined. One drawback to the lack of a definition is that people may believe they have rights that they do not have, there can be disagreements over what those rights are, and there is no definition of "consultation" in the tenure policy. When the procedures are finally drafted, this Committee and the provost must approve them; they are then presented to the Faculty Senate and the Board of Regents for information, after which they go into effect.

Professor Miksch observed that the discussion of section 12 procedures is timely, given the proposed rearrangements with respect to the College of Biological Sciences and the College of Food, Agricultural, and Natural Resource Sciences.

The discussion today, Professor Miksch said, is to be focused on remedies, what is meant by consultation, and what is meant by program change and program closure. The Committee has a draft, prepared by Dr. Carney and Professor Kimberley, that is based on a memo from then-Provost Sullivan when the college mergers occurred during the last strategic-planning exercise. The Committee concluded that it should develop procedures rather than rely solely on a provostal memo.

Professor Kimberley said that if one is a regular faculty member (i.e., tenured or tenure-track), in the case of program closure the University will appoint someone to assess the possibilities for reassignment of a faculty member from the program being closed, which may include retraining. The

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faculty member may be reassigned to another campus or unit of the University, and failing that, section 12.3 provides that [the quoted language is from the draft procedures, not the tenure policy]:

the University may consider other options, including assignment to:

- teach in another field in which the individual is qualified;
- perform professional or administrative duties, including professional practice in a field in which the faculty member is qualified; or
- transfer effort, by assignment in a suitable professional capacity, at another educational institution or similar entity, while retaining University tenure, compensation, and benefits."

A Memorandum of Understanding will be executed between the University and each reassigned tenured faculty member specifying the standards and expectations that will be used after reassignment to an academic unit to consider the faculty member for promotion (if applicable), annual review, and compensation; in particular, tenured faculty members reassigned to another academic unit may choose to be evaluated according to the departmental statement applicable in their original units under *Faculty Tenure* subsection 7.12.

If the tenured faculty member accepts an assignment that requires retraining, then the MOU will include the details of the retraining including the duration, the University's financial obligations in providing this retraining, and the plan for annual reviews of performance during the retraining period.

Professor Kimberley then noted that if a faculty member does not wish reassignment, section 12.4 of the policy provides that [again, per the draft language of the procedures]:

a tenured faculty member who chooses not to accept a reasonable reassignment or retraining opportunity shall receive

1. assistance in locating other employment;
2. a minimum of one full academic year's notice or one year's salary as severance pay in lieu of notice, unless the appointment expires in less than a year, in which case the faculty member will receive notice equal to the term remaining or, as severance, an amount equal to the salary for the remainder of the appointment;
3. continuation of the University's contribution to health benefits for one year after the date of the termination of the appointment.

In place of the severance payment provided by this section, a faculty member may elect an alternative severance program for which he or she is eligible at the time the appointment is terminated.

Professor Kimberley said that it struck her that it may not be in the best interest of a probationary faculty member to accept retraining, someone who has just come out of the education in his or her field. As the language reads, the first option is retraining, and if not that, then there are other choices.

Vice Provost Carney said she had a slightly different view because she does not see the options as different for tenured and probationary faculty members. She tried to imagine how to treat the faculty members the same. For tenured faculty, retraining seems to make sense because they are already here and tenured. For probationary faculty, if their program is closed, does that mean the University extends the probationary period for them? For how long? Does the University pay for retraining?

Professor Shippee asked what "retraining" means. It is very broad, Dr. Carney said, because the tenure policy is very broad. For some individuals, retraining might not be a major effort and they could continue teaching similar courses. If someone is not obtaining a new degree, do they have protected time, Professor Shippee asked? That question is one reason why these procedures are being drafted, Dr. Carney responded, but they cannot be very specific because each case is so different. A Memorandum of Understanding is needed in each case. This is a complex matter, she said, but did not come up during the earlier college mergers because in that case entire departments moved. The case where section 12 comes into play is the example of closing the Waseca campus.

Professor Kimberley said that she thought there should be choices for probationary faculty members, who may want to leave the University and continue their research and teaching elsewhere, so the University could provide severance help. (Both of those provisions are currently in the tenure policy, Dr. Carney noted.) Professor Kimberley said they should not be the alternatives only if reassignment does not work out.

Professor Rabinowitz said the term retraining has implications about professional degrees but it is more difficult to apply to the humanities. One is educated in the humanities. Dr. Carney said a change along that line would require amendment of the tenure policy. Professor Rabinowitz asked what would be entailed in retraining. A new research agenda? New teaching? Those would be a violation of academic freedom; one was hired to do research and scholarly work in one's field. One does not want too many details in a set of procedures but some of this sounds like moving someone between auto plants.

Committee members discussed with Dr. Carney how faculty positions are funded, with Dr. Carney noting again that there are no "faculty lines" that move with a faculty member. She pointed out that faculty members constitute a "bill" for the college (salary, fringe benefits, varying other costs) that must be paid, typically from revenue from teaching, grants, and so on. She assured the Committee that in case a probationary or tenured faculty member moves from one unit to another, that person will continue to be paid and need not worry about the source of funds; once a transfer has been effected, it is up to the unit to identify the sources of funds to pay the person.

Professor Kimberley posed a case. If a probationary faculty member who teaches French is informed that the French Department is closing and only Spanish will be offered, does that person want to change to Spanish or go to another institution? The department has to earn the money to pay the person's salary, as Dr. Carney has pointed out. Another option for the person would be to take a P&A position, Dr. Carney said, which was an option that some of the faculty members at Waseca selected when that campus was closed. Or the person could teach freshman

seminars for half the appointment and carry out P&A functions for the other half. In either case, the person remains a tenured faculty member. The University tries to find a job to fit the person's abilities, although the circumstances have not arisen except with the closing of the Waseca campus.

Professor Rabinowitz pointed out that in that particular example, there is probably no other position in French and there are hundreds of people who apply for the positions that do become available. There won't be any options to continue as a French professor, and she would like to see protection for the French professor, who has given up other options to come to a university.

The question is how far the University is expected to go, Dr. Carney said. It cannot treat someone without tenure in the same way that it does someone with tenure. Professor Rabinowitz maintained that if the University hires someone as a probationary faculty member, it has done so taking into account program needs, and there is some implied agreement. But what if that activity is no longer going to be done at the University, Dr. Carney asked?

Committee members and Dr. Carney discussed what might be in the contents of a Memorandum of Understanding with a faculty member, what the order of the person's options might be, and the extent of the need for specificity in what the University and the faculty member would do. Professor Kimberley observed that a probationary faculty member moved to a different department would have to achieve tenure in that department.

Professor Cohen said that part of the problem is that the Committee is looking at too many absolutes, most of which will not exist. Faculty friends in the humanities tell him that they often teach in areas not related to their scholarship, so it seems unlikely that humanities scholars would have to change their scholarship if they changed departments. With respect to retraining, most faculty members after 15-20 years are not doing what they were originally hired to do.

Professor Miksch said she is hearing that it would make sense that there would be differences as probationary or tenured faculty sign a Memorandum of Understanding. Teaching and research evolve; she said she heard no sentiment expressed to change the tenure policy, but it is necessary to recognize that how these events will play out will differ with individual faculty members. Professor Kimberley said she did not believe that probationary faculty members should be afforded the same level of protection as tenured faculty members—because the former have not achieved tenure. What if a probationary faculty member is not as good at what he or she does as the unit was expecting or is not putting out the effort required; what if the person is on the way to not getting tenure? Should that person have the same protection as the person who has achieved tenure? That is a point worth discussion, she maintained. They deserve severance or the opportunity to move to a new department, but not the same level of support as tenured faculty.

If they are not to be provided the same level of support, the tenure policy must be changed, Professor Shippee pointed out. Professor Kimberley agreed. One point of the discussion, Professor Flink said, is to determine whether or not to recommend changes to the code. Professor Miksch suggested returning to a focus on retraining and development processes, on whether all regular faculty have the same rights and responsibilities, and on the meaning of

consultation, as well as to defining programmatic change and closure; there are differences of opinion on what the last one entails.

Professor Kimberley said if the Committee believes that benefits to probationary and tenured faculty members should not be the same, it would be possible that the procedures suggest the same benefits are available to both but the duration could be different (e.g., related to years of service and whether one is tenured or not). Dr. Carney noted that there is a nuance in section 12.2 of the tenure policy: "In the event that programmatic change leads to discontinuation of a program in which a member of the faculty is employed, the University recognizes its obligation to continue the employment of regular faculty in accordance with the terms of their employment. . . ." The terms of employment are not the same for tenured and probationary faculty members (although she said she would wish to have an opinion from the Office of the General Counsel before predicating too much on that difference). So it would perhaps be possible to talk about a different set of remedies if put in the context of terms of employment.

Professor Cohen agreed that the situation is more complicated pre-tenure. A person is hired with the idea that performance will determine whether or not he or she will achieve tenure—and that the outcome will not be determined by something not in the person's control. So the Committee must be cautious; the University cannot yank the rug out from under a probationary faculty member for reasons unrelated to the person's performance. Tenure should have strong protection, more than for a probationary faculty member, and a contract should spell out what the person is to do.

Dr. Carney said it would be useful for the Committee to hear from Dr. Shultz in the provost's office, because the University makes programmatic changes all the time and Dr. Schultz can describe the range of changes that occur and the process that is used. For example, when a major or graduate program is phased out, there is a process to go through that ends with review by the provost and action by the Board of Regents.

Professor Buhlmann commented that defining programmatic change is difficult; should the Committee look at it from the point of view of the individual? Dr. Carney cited Professor Cohen as an example, a faculty member in Horticulture who is also a member of a number of graduate programs. If a graduate program is phased out, that would have no effect on his appointment. She said what the people who wrote section 12 were concerned about was the example of Waseca—large things. There could be large things coming with the CBS/CFANS discussions. By reviewing what Dr. Shultz could provide, the Committee might look at the range of changes that take place and say what it means (and does not mean) by programmatic change.

Professor Miksch said that section 12.1 talks about changes in programs only after consultation; that word needs definition.

[The University and faculty recognize that changes in academic programs are an essential part of the development and growth of the institution. These changes should be based on academic considerations and on long-term policy and planning, and may be undertaken only after consultation with the faculty, including the appropriate governance structure.]

Section 12.2 talks about program change that leads to discontinuation of a program in which faculty members are employed.

[In the event that programmatic change leads to discontinuation of a program in which a member of the faculty is employed, the University recognizes its obligation to continue the employment of regular faculty in accordance with the terms of their employment, and to continue the employment of non-regular faculty for the term of appointment. In case of fiscal emergency, the provisions of section 11 apply.

Regular faculty members who are so retained have the responsibility to accept teaching or other assignments for which they are qualified, and to accept training to qualify them for assignment in other fields. The University has the responsibility to assign such faculty members to responsibilities as closely related to their original field of tenure as is practicable, to allow them time in which to continue scholarship in their original field if they wish, and to recognize scholarly contributions in that field as valuable in assessing their contribution to the University for pay, promotion and other purposes.

In addition to the steps mentioned above, the University has the right to offer inducements to faculty members voluntarily to change fields of study, to seek employment elsewhere, or to accept early retirement.]

There is a difference of opinion regarding what discontinuation means, Professor Miksch said. Tracy Smith, from the Office of the General Counsel, looked at the draft section 12 procedures and indicated she thought mergers could be programmatic change and could lead to discontinuation. There is a huge range of programmatic change that could require consultation, and one might have a different opinion about what is considered a discontinuation.

Professor Buhlmann said that if a faculty member moved to a new unit but could continue his or her research/scholarship and has access to students and can teach courses, a place where there is not a lot that is new for the person, he doesn't care if that is called programmatic change. So it may be more efficient and easy to talk about the individual experience than about programmatic change.

Professor Rabinowitz said she strongly disagreed with a focus on the individual and said she wanted an institutional position. She said she liked the provisions of section 12.1; 12.2 is not just about discontinuation, it is also related to employment. Many faculty work in programs, but that is not where they are employed. She said she believes faculty members are employed at the University, which is what the tenure debate was about. She suggested the definition of programmatic change not be too specific.

Professor Flink suggested that a single menu of options would be elegant and one could apply his or her term of employment to them to decide which to select. He asked Professor Kimberley and Vice Provost Carney to draft a revision for the next meeting.

Ms. Scott inquired if programmatic change includes establishing new programs. Dr. Carney commented that establishing a new program does not usually mean people lose their jobs. But the point is a good one; the procedures can clarify that they apply to reductive programmatic

change. Per section 12.2, if programmatic change leads to discontinuation of a program where a faculty member is employed, Professor Rabinowitz said.

Dr. Carney observed that the language should also make clear that programmatic change does not include individuals who want to move to a new department. When departments move, some faculty members may not want to move with it, but that is not an instance where section 12 would come into play. Professor Flink agreed and suggested that be clarified in the procedures. Professor Miksch said that there is a section in the tenure policy that recognizes that faculty members change over their careers; the procedures could point to that language.

Professor Cohen asked what happens, for example in the case of a proposed merger of two colleges, if all of the faculty members in one college were opposed and went to Vice Provost Carney to protest. Dr. Carney said that would be unusual and the proposal would likely be sent back for further discussion. Professor Cohen suggested not making the distinction too specific because there could be cases where there would be massive action.

Professor Flink asked for volunteers for a subcommittee to help with defining programmatic change and discontinuation. Professors Elliott and Kimberley agreed to work with Dr. Carney on developing language.

Professor Miksch asked after Professor Rabinowitz's suggestion that the definition not be too specific. Many of her colleagues (she was in the General College) talked when General College was closed and made into a department in what became the College of Education and Human Development. They were told that that was not discontinuation, it was programmatic change, so remedies for discontinuation were not available. There was a considerable difference of opinion about that designation. She said she would like to know what is meant by discontinuation so that faculty members know what remedies are available. Professor Flink said that the University as an institution sees it as in its best interest to define the term discontinuation as narrowly as possible. The Committee can consider it after it hears from Dr. Shultz.

2. Policy Revision: Education Abroad Opportunities: Addressing Health and Safety Risks

The Committee returned to revisions to the policy on education abroad and the role of the International Travel Risk Assessment and Advisory Committee (ITRAAC) in reviewing graduate student field work abroad.

The Committee approved changes in the language providing that the graduate student's adviser, the program's director of graduate studies, and the dean must approve travel to risky locations. In the event that the adviser and the director of graduate studies are the same person, the unit head for the graduate program must approve the travel plans. In the case of programs that are part of more than one college or report to more than one dean, the language provides that the deans will decide how to review and act on such requests.

The Committee voted unanimously to send the revised proposal back to the Faculty Consultative Committee.

3. Technical Changes to the Tenure Policy

The Committee voted unanimously to ask the Executive Director of the Board of Regents, Mr. Steeves, to make two technical changes to the tenure policy (which, under the provisions of Board policy, he can do in consultation with the Board chair). The changes correct the name of the Committee in the policy and change the identification of the Senate to which changes in the policy are directed (Faculty Senate, not University Senate).

It was also agreed that the Committee will request Mr. Steeves not to change the date of the policy, given that a large number of internal administrative documents refer to the policy with the current date.

4. Policy on College Personnel Plans

Professor Flink asked Professor Miksch to provide an overview of the discussion about changes to the policy *Academic Appointments with Teaching Functions* (which calls for the creation and approval of college personnel plans) that had taken place at the Senate Committee on Faculty Affairs (SCFA) earlier in the week. (The policy provides that for any college where the number of individuals teaching who are not tenured or tenure-track (TTT) faculty exceeds 25% of the number of TTT faculty, it must submit a supplemental plan that must be reviewed by this Committee.)

Both this Committee and SCFA have discussed college personnel plans, Professor Miksch recalled; this Committee looked at the ratio between TTT faculty and all others who teach and has talked about the need for consultation when colleges develop their plans. The SCFA discussion was about whether to continue a one-size-fits-all ratio, which some colleges consistently meet and which some consistently do not, or establish different and realistic ratios for some colleges. Some colleges, for example, need practitioners from the community to help deliver instruction.

Vice Provost Carney said that over the long term, for example, in medical and dental education there is need for a large number of annually-renewable staff, people who are fully employed by the University and who have full benefits. In architecture, in contrast, there is need to bring in practicing professionals to teach courses. Medicine and Dentistry are not like liberal-arts education, and that is true across the country. The Committee heard from then-Senior Vice President Frank Cerra (Academic Health Center) as well as the interim dean of Dentistry about teaching needs in medicine and dentistry. So the idea that was discussed at SCFA was whether or not to set realistic long-term ratios for some schools and periodically revisit them, Professor Miksch said.

Professor Rabinowitz recalled that the Academic Health Center was the genesis of the tenure debate in the 1990s. The message of the debate was about holding tenure in the University, a policy that served as an impetus for some members of the Board of Regents (1) to rewrite the tenure policy because they wanted to change the locus of tenure (to the department or college) and (2) to move to more non-tenured/non-tenure-track (NTTT) faculty. This is a slippery slope, she said. Dr. Carney said that college personnel plans are not mentioned in the tenure policy and do not violate the policy. Professor Rabinowitz agreed but observed that it is a legacy of the tenure debate.

Professor Cohen said that NIH grant applications encourage appointment of NTTT faculty, and many faculty members carry the "research professor" title; they also teach, and some percentage of them

are clinical faculty who are practicing in their field. He said he was uncertain about the best way to run an academic research center on soft funds, and there are some departments across the country that would be bankrupt without soft funds. He said he was not sure he opposed the idea of different ratios for some colleges, but he was also not sure he wished to embrace it. He observed as well that many NTTT faculty perform the same duties as TTT faculty.

Vice Provost Carney said that many TTT faculty also pay their salaries on grants; that is not a phenomenon limited to contract faculty. Professor Shippee concurred and noted that the majority of the faculty in his college (Public Health) cover their salaries with grants. With the reductions in funding because of the sequester, the faculty have been informed that they may seek external contracts. The majority of the contract faculty in the Medical School are clinical scholars, Dr. Carney said.

Professor Miksch reported that SCFA did not decide anything, it just received a report. SCFA would appreciate direction from this Committee; what feedback does it wish to provide?

Professor Shippee asked what the point of the ratio is. At the time it was talked about, Dr. Carney said, there were a number of things going on. The backdrop was questions about the appropriate number of TTT faculty, what is the University today, and the Academic Health Center. The University must have a cadre of NTTT faculty (e.g., her department has someone who has replaced her while she serves in an administrative position).

Professor Kimberley reported that her department has 12 TTT faculty but does not possess all the expertise it needs, so it brings in outside experts. If there is a legitimate need for that expertise in her unit, Professor Cohen asked, why does that not warrant hiring someone with tenure? Because they are practitioners who do not wish to be required to develop a research program; they want to practice but are willing to teach. That is a slippery slope, Professor Cohen rejoined. He recalled experience at a previous institution, where there were three extremely good (NTTT) instructors in botany, but students were not majoring in the field. The department changed instruction to a member of the National Academies, a tenured faculty member, and enrollment in the major soared. One can justify the use of individuals who are pedagogically perfect, but they do not produce the excitement and get students into the field.

Professor Flink said there is a balance to be struck. He noted the BFA program with the Guthrie Theater, which has seen explosive growth. Using external instructors allows a department to change as the field changes using people who do not want the tie-in of a faculty appointment. Perhaps it is necessary to re-think the faculty role, Professor Cohen said; he maintained that the concept of using NTTT instructors is a slippery slope that can be used to talk a department or institution out of making TTT faculty appointments. There is a reason for having someone achieving a level of scholarship and to have those accomplished scholars actively teaching classes. One can argue that NTTT faculty do good things, but departments should not whitewash the situation by saying that it needs X, Y, and Z when it could do better with tenured faculty members. Professor Flink observed that there is also the practical consideration that much of the service work in a university can only be performed by the TTT faculty.

Professor Elliott observed that other departments at the University where this is an issue are the languages, where there are few tenured faculty but which must deliver a great deal of instruction. In the Academic Health Center, there are not research faculty in NTTT lines; they are practicing, bringing in money, and teaching. The Committee also heard, for the College of Design, that they have changing disciplines with need for the avant-garde. The University must have the ability to hire people in NTTT

positions, and when hiring was extremely constrained in 2008, units had to hire NTTT faculty; in some cases, use of NTTT faculty is just the reality. Whether the number in the policy changed, there are portions of University work that benefit from NTTT faculty contributions. There can be one policy or there can be acknowledgement that some parts of the institution need NTTT faculty work.

Professor Kimberley asked Professor Cohen if he was arguing that there should not be clinical faculty appointments. He is not, Professor Cohen said, he was suggesting that the University needs to be careful about going in one direction. There are clinical faculty who do clinical research who should be tenured because they are doing research. Dr. Carney said that many clinical faculty do not want to have to meet departmental 7.12 standards. Those who do should be tenure-track, Professor Cohen said.

Professor Kimberley said she would argue that there is value to variety, including TTT faculty, clinical faculty, and other contract faculty. There are clinical faculty members who do research—and who want to publish perhaps one article per year. They are valuable to the department but they would leave if they were forced into a tenure-track position. Mr. Petty said that in Economics, a number of the faculty work closely with the Federal Reserve and have left to take positions to do research there.

Professor Cohen said he is talking about the employment of individuals who are engaged in instruction and clinical research who are put in NTTT status. It is a legitimate question to ask if they are doing things that could be done by tenured faculty, so does the University have a cadre of NTTT faculty who are doing what TTT faculty do? If they are doing something different, one must look at the bar to tenure. Are units hiring NTTT faculty to do something that TTT faculty could do better? It is fine if NTTT faculty are doing something different; his argument is that if the job could be done by TTT faculty but a department decides to hire NTTT faculty to do it, that is a slippery slope. Every employer no doubt wants to hire faculty members year by year so they can fire them as needed.

A critical question is whether the personnel policy substantively affects how tenure articulates itself at the University, Professor Flink said. Does the Committee wish to retain the one-size-fits-all ratio or develop unique ratios for some units? Professor Shippee asked if a college cannot meet the ratio, is it onerous to file a supplemental plan? Why require it if it doesn't make sense, Dr. Carney asked? So if a college files a plan every year that does not meet the ratio, the filing is meaningless, Professor Shippee said. Professor Flink emphasized that we want a policy that the various colleges will not be required to keep requesting exemptions to each year and still be one that properly protects the role of tenure in the institution. So does the Committee want the one size or different standards to reflect reality?

Professor Miksch said this Committee is charged to review supplemental plans, but it doesn't know if they have been discussed by the faculty and staff because nothing comes with the supplemental plans. So the Committee has little information available to it. The Committee provides consultation for the provost, Dr. Carney said.

Professor Flink said the Committee would constitute a new subcommittee and continue the discussion. He adjourned the meeting at noon.

-- Gary Engstrand