

Academic Freedom and Tenure Committee (AF&T)
Meeting Minutes
October 10, 2014
10:00 – 12:00

[These minutes reflect discussion and debate at a meeting of a committee of the University of Minnesota Senate; none of the comments, conclusions, or actions reported in these minutes represents the views of, nor are they binding on, the Senate, the Administration, or the Board of Regents.]

[In these minutes: COACHE Survey results; Section 10 - Action; Section 12 discussion; Academic freedom and civility discussion; New business]

Present: Phil Buhlmann and Teresa Kimberley (co-chairs), Jerry Cohen, Barbara Elliott, Jessica Larson, Al Levine, Holley Locher, Karen Miksch, Paula Rabinowitz, Nicole Scott, Nathan Shippee, Kevin Upton

Regrets: David Born, Catherine Squires

Absent: None

Guests: Ole Gram

Others: Rachel Bergerson; Naomi Scheman, president, AAUP U of M Chapter

1. WELCOME

Professors Buhlmann and Kimberley convened the meeting and asked for introductions.

2. COACHE SURVEY RESULTS

Vice Provost Levine presented the Collaborative on Academic Careers in Higher Education (COACHE) Faculty Job Satisfaction Survey results. He explained that they selected 5 peer schools for comparative data: Purdue, U of Arizona, UC Davis, UNC - Chapel Hill, and U of Virginia. The survey was developed and administered by the Harvard Graduate School of Education.

- There was a 37% response rate, as survey fatigue could have been a factor. The COACHE survey sent at the same time as the Employee Engagement Survey. Peer institutions had higher response rates. They intend to present the results at the college level.

He explained that the results indicate that there have been improvements since 2006, which is the last year the survey was completed.

Dr. Levine explained that three is considered satisfactory, contract faculty are included but not P&As. He then highlighted the following points and members discussed:

- The U of M did well in most areas. However it is important to look at the actual scores, not just the comparisons.
 - Department collegiality and department engagement- not as well as peers.
 - Although the University of Minnesota is not an outlier, interdisciplinary work, collaboration, and mentoring scores need to be addressed. Though 7.12 statements have been revised, the culture is taking longer to shift. Can interdisciplinary work be recognized at the same level as individual work?
 - There have been dramatic changes in tenure clarity since the last survey.
 - A member said that budgets discourage interdisciplinary work so it is not surprising that this is the lowest score and consistent.
 - This issue will be discussed as the Strategic Plan is implemented.
- 69.1% of faculty said, if they had to do it again they would select the University of Minnesota. Peers: averaged 67%
- Over half of the teaching staff is not represented because P&As with teaching functions are not included.
- Members asked: Is there an ability to look at these same issues in the Employee Engagement Survey since all employees receive it?
- Pre-tenure, tenured, and non-tenured are now included in the 2014 COACHE Survey.
- Could there be a visual representation of the differences between current and past results?

In closing, Professor Kimberley pointed out that the responses in terms of gender should be explored in the future, especially in areas of leadership and collegiality.

3. SECTION 10 UPDATE

Professor Buhlmann introduced the revised draft of the Section 10 procedures that were edited after the September meeting. He explained the following details:

- The Procedures consist of 3 parts:
 - Part 1 - How to register with DRC
 - Part 2 - What would happen if they are registered with the DRC but do not want to take the leave
 - Part 3 - If the faculty member is not registered, they are not protected by Section 10
- A sentence has been added:
“It is the responsibility of every dean and unit head to assure that all faculty members are regularly made aware of the possibility to register with the Disability Resource Center.”

- Should “regular” or “annual” be used? Professor Buhlmann explained that “annual” is appropriate for some departments, but not all. There are also instances when it would be more than annual. The decision could be made locally.
- Professor Kimberley explained that this was added to ensure that deans are aware that they need to inform all faculty of the DRC regularly.

Members voted and unanimously approved the Section 10 procedures.

The approved draft is appended to the end of these minutes.

4. SECTION 12 DISCUSSION

Professor Kimberley explained that the procedure change proposed for Section 12 does not alter the Tenure code and it is an attempt to streamline the execution of the code in the event of programmatic change. They are bringing this to the committee again because there have been more issues raised. She outlined the two following issues and members discussed:

- What are the operational steps in the event of programmatic change? You are assigned an administrative officer and this could lead to reassignment or retraining. If these options are refused, there are other options that include assistance with finding new employment. Members did not agree with the implication that there would not be a reassignment and expressed concern about the following sentence:

“Reassignment may not be in the best interests of a faculty member or may not be possible for other reasons. In such a case, the faculty member should indicate so to the officer, and alternatives to a reassignment may be considered, as also in the case of reassignments declined by the faculty member.”

- The goal is to make it clear that the faculty member should be a part of the initial discussion.
- There are instances in which reassignments can be made with bias. A faculty member needs the ability to appeal an assignment that is to the detriment of the faculty member.
- It was suggested that instead of just “retraining,” add additional language such as what the retraining could include, for example a sabbatical.
- Professor Miksch pointed out that Section 12.2-4 is written as procedures. She believes an interpretation is needed to define “discontinuance.” 12.2 describes the obligations of the University. 12.3 allows for an appeal to the Judicial Committee. 12.4 allows for a faculty member to refuse the reassignment. She emphasized that this covers Tenure and Tenure-track. Procedures would help to list actual language from the code in one document, as many are not aware that 12.2, 3, and 4 are helpful. The goal is to make this process more transparent.

- The fact that 12.4 includes the right to refuse an unreasonable offer, could be amplified.

Professor Kimberley clarified that since the intent is to engage the faculty member in the beginning and give them assurances that they will be consulted; the procedures could make it clear in the beginning that the faculty member does not have to accept what they are offered.

- Professor Shippee agreed that there are two goals of the procedures: making people aware that the MOU does not have to be accepted, and make sure that the faculty member is consulted before the MOU is offered.
- VP Levine said that one function of the procedures is to answer questions that the faculty have that are not answered in the code. For example: What triggers the use of these procedures?
- Professor Kimberley added that the procedures are meant to update the information from the memo written by Provost Sullivan in 2007. It should be made clear that the faculty member will have input as to what they are offered.
- Professor Miksch added that “consultation” might not be strong enough because it does not imply that in this initial consultation the faculty member has veto power.
- Professor Kimberley reminded members that just because a faculty member prefers to move a certain department, it does not mean that the department has to accept them. Their salary does not follow them as made clear in the memo from Provost Sullivan.

Professor Kimberley said that this would return with some changes as a result of the discussion. Professor Buhlmann posed the following questions: What is the definition of programmatic change? Are there examples that could be included as a non-exclusive list of programmatic change? Members discussed:

- The Judicial Committee has confronted issues related to programmatic change and they would have perspective on this issue.
- A changed program includes a change in delivery, such as a change to online courses, and this would enact 12.1 and must be voted on by the Regents. Changes that must go to the Regents could be used as examples.
- Is PSTL being discontinued? If so 12.2-4 applies. Previously General College was not considered a closure; therefore 12.2-4 could not be used.
- Without examples, arguments have been made in the past regarding The Graduate College and General College. A merger was not considered to be a discontinuance by some. What percent in a merge must be retained of the individual units?
- Should the historical instances be referenced as examples? Some members thought that this could be problematic because it could prevent forward progress and future changes.

- Dissolution is not defined within the code; it is in the memo from Provost Sullivan.

The committee agreed that they would like to be involved in the writing of these procedures, rather than just have an updated memo from Provost Hanson.

Professor Kimberley asked if someone would volunteer to develop language and then have this reviewed. Professors Miksch and Shippee volunteered to draft examples of programmatic change.

5. ACADEMIC FREEDOM AND CIVILITY

Professor Elliott introduced the discussion of academic freedom and civility. She then asked what circumstances led to the Community Forum on Speech, "Civility," and Academic Freedom taking place on October 21, 2014. VP Levine explained that this is related to the campus climate discussions.

Professors Miksch and Scheman are on the panel of the upcoming discussion

Professor Scheman explained that she had a specific request in regard to an issue that occurred last spring involving student groups. Academic freedom is often coupled with both civility and responsibility, but this should still allow for "disruptions" from outside voices. "Responsibility" should not be a limiting term and "disruption" should not have a negative connotation.

Professor Miksch explained that the conversation is to be an ongoing dialogue and there will be facilitated small groups and then reporting out.

Members made the following comments:

- "Civility" can be a narrowing term to discourage the questioning of existing structures.
- Though the committee was not included in the arrangements for the discussion and neither were the system campuses, they are looking forward to exploring the outcomes of the discussion.
- The committee also looks forward to being engaged with Administrators in future discussions and planning of campus events regarding Academic Freedom and Tenure.

6. NEW BUSINESS

Professor Rabinowitz introduced an item related to the tenure procedures at the Rochester campus. They are attempting to rewrite their 7.12 statements, but the implementation of current statements has not been followed.

VP Levine said that a team of faculty members are being assembled that will serve as a virtual department.

Hearing no further business, Professors Buhlmann and Kimberley adjourned the meeting.

Jeannine Rich
University Senate Office

AF&T Section 10 Procedures Approved on October 10, 2014

Procedures: Unrequested Leaves of Absence for Disabled Faculty Members

The pertinent parts of the tenure regulations read as follows:

Section 10. Unrequested Leaves of Absence for Disability and Disciplinary Action

10.1 Unrequested Leave of Absence for Disability. A faculty member who is physically or mentally unable to perform reasonably assigned duties may be placed on unrequested leave of absence. The faculty member is entitled to sick pay and disability insurance payments in accordance with University policy. The faculty member has a right to return to the faculty upon termination of the disability or cessation of disability payments.

10.2 Disciplinary Action

10.21 Termination or Suspension of a Faculty Appointment Before Its Expiration. A faculty appointment may be terminated or suspended before its ordinary expiration only for one or more of the following causes:

(a) sustained refusal or failure to perform reasonably assigned duties adequately; (b) unprofessional conduct which severely impairs a faculty member's fitness in a professional capacity; c) egregious or repeated misuse of power of a professional position to solicit personal benefits or favors; (d) sexual harassment or any other egregious or repeated unreasonable conduct destructive of the human rights or academic freedom of other members of the academic community; or (e) other grave misconduct manifestly inconsistent with continued faculty appointment.

Termination Or Suspension Of A Faculty Appointment For Cause.

14.1 Preliminary Proceedings. Only a dean or an academic administrator specially designated by the senior vice president for academic affairs and provost or by the senior academic administrator may initiate preliminary proceedings under this section leading to unrequested leave of absence or to suspension or removal or to temporary or permanent reduction in rank. The dean must first attempt to discuss and resolve the matter with the faculty member involved.

Purpose for new procedures to govern Section 10(1):

The Academic Freedom and Tenure Committee recognizes that there are differences between an unrequested leave in the case of a faculty member who is being terminated or suspended due to misconduct (for example, in cases arising under 10.21 (c), (d), or (e) of the tenure regulations) versus faculty members with a disability governed by section 10.1 of the tenure regulations.

As the American Association of University Professors (AAUP) report *Accommodating Faculty Members who Have Disabilities* (2012) notes:

In higher education, as in American society generally, one still often encounters the stereotype that disability necessarily equates with diminished professional competence. With suitable accommodations, a faculty member who has a physical or mental disability may perform equally as well as, or even better than, a colleague who does not have a disability . . . In promoting access and success for faculty members with disabilities, the AAUP highlights the significant talents of an important group, promotes a diverse professorate, and expands role models for students.

The purpose of these procedures is to recognize, as does the AAUP, the significant talents of an important group of faculty members at the same time providing due process and transparency for disabled faculty members and unit heads and deans in the event there is an unrequested leave of absence. The procedures draw from the best practices outlined in the 2012 AAUP report.

Procedures:

Definition:

Disabled faculty member: A person who has registered with the disability resource center. [provide a link to the Office: <https://diversity.umn.edu/disability/employeeservices>]

1. Registration with the Disability Resource Center

If a faculty member believes that a disabling condition impedes his or her discharge of professional responsibilities, it is the right and responsibility of the faculty member to raise the issue with the disability resource center.

(a) If a faculty member decides to register with the disability resource center, the office will work with the faculty member and the appropriate unit head to ensure that reasonable accommodations are put in place so that the faculty member can perform the essential job functions. These accommodations may include, but are not limited to, granting a request from the disabled faculty member for a leave of absence.

(b) A faculty member will not be retaliated against in any way for registering with the disability resource center, nor will the office disclose the faculty member's disability without prior consent.

2. Unrequested Leaves of Absence for Disabled Faculty Members

If a unit head and the unit faculty elected to serve as the post-tenure review committee determine that a disabled faculty member who has been provided reasonable accommodations is no longer

performing essential job functions, the disabled faculty member has two options. The disabled faculty member may elect to proceed:

(a) pursuant to section 10.21 and 14.1; or,

(b) under the following procedures: The dean, a representative from the disability resource center, and the disabled faculty member will meet and discuss whether the faculty member should take a leave of absence. If after this meeting, based on advice from the disability resource center, the dean determines that there should be a leave of absence and the disabled faculty member declines, the dean will notify the disabled faculty member of the right to appeal the decision to the Judicial Committee pursuant to section 14.1 of the tenure regulations.

3. Cases where a faculty member does not register with the disability resource center

It is the responsibility of every dean and unit head to assure that all faculty members are regularly made aware of the possibility to register with the disability resource center.

A faculty member who decides not to register with the disability resource center is not governed by section 10.1 of the tenure regulations.

NOTE TO SECTION 2 ABOVE: The AAUP 2012 report, Appendix C, notes the following:

In the context of a faculty dismissal process where there may be an issue of a disability, while it is humane to take into account the potential stigma and privacy issues of a faculty member, it would probably violate the ADA and Rehabilitation Act to have a mandatory process on a health or disability issue. While it might be appropriate to provide a faculty member an option of addressing the issue outside of the ordinary termination process, it is problematic to require it.

The AAUP also notes the need for consistent and appropriate procedures for termination and for addressing disability issues. Again, that is the purpose of drafting procedures to accompany section 10 of the tenure regulations.