

Minutes*

Academic Freedom and Tenure Committee
Friday, March 23, 2007
9:30 – 11:00
300 Morrill Hall

Present: Tom Clayton (chair), Yusuf Abul-Hajj, Tracey Anderson, Arlene Carney, Candace Kruttschnitt, Karen Miksch, John Mowitt, Paul Porter

Absent: Carol Carrier, William Doherty, James Farr, Joseph Gaugler, Terry Simon, Jianyi Zhang

Guests: none

[In these minutes: (1) tenure code issues; (2) procedures for reviewing the performance of tenure-track probationary faculty]

1. Tenure Code Matters

Professor Clayton convened the meeting at 9:30 and noted that there were several small tenure-code matters to settle.

(1) Vice Provost Carney provided draft language to define "other creative work" in section 7.11. The Committee, following one small editorial revision, adopted the language for the footnote in section 7.11:

"Other creative work" refers to all forms of creative production across a wide range of disciplines, including, but not limited to, visual and performing arts, design, architecture of structures and environments, writing, media, and other modes of expression.

(2) Professor Clayton next reported that faculty are being surveyed on public engagement; the survey included a definition of public engagement, which he read to the Committee. Dr. Carney explained that the definition came from the CIC and is one the University agreed to. It is not official University policy, simply a definition the University accepts.

(3) Professor Clayton then reported on a communiqué he had received from one of the deans indicating how backward he thought the Committee was for not approving other means of voting on tenure decisions when one cannot be present at the meeting. Would the Committee endorse research and a demonstration project, if that could be arranged? The Committee generally agreed that it would.

Some argue that no meeting is needed at all, Dr. Carney said, which she believes to be dangerous. Minds have been changed at discussions of candidates; discussion also allows people to clear up confusion or misunderstandings about a file. The question is not about technology, the question is about having a meeting.

* 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.

(4) The Committee agreed that Professor Clayton would revise the footnote to section 5.5 (which deals with stopping the tenure clock); the footnote establishes family members for whom one may stop the clock because of caregiving responsibilities. Subsequent to the meeting, the Committee agreed on this language: "(fn 1) The term 'family member' is meant to include a spouse or domestic partner, an adopted or foster child, or other relative."

(5) The Faculty Consultative Committee raised a question about the application of 9.2 standards (for promotion from associate professor to professor): which 9.2 standard would an assistant professor be bound by, the one in place (or none at all, under the current code) when he or she was hired, or the one in place at the time he or she is promoted? Vice Provost Carney said she thought the Committee had decided that they would be bound by the 9.2 standards in place at the time they are promoted to associate professor. FCC members asked whether the condition at time of hire should not be an option.

Dr. Carney suggested the Committee obtain an opinion from the Office of the General Counsel. She said it would be a problem if a current assistant professor had the option to select the current section 9 of the tenure code (which has no standards at all for promotion to professor). One could argue that faculty members are not bound by post-tenure review if they were hired before those provisions of the tenure code were adopted. It was suggested that when the faculty vote on tenure-code changes, through their representatives in the Faculty Senate, and the Board of Regents adopts the changes the Faculty Senate recommends, the changes become binding on all faculty.

Professor Miksch commented that there is a legal presumption against retroactivity, so any language will have to be carefully crafted. The current interpretation discusses the option probationary faculty have about choosing which departmental 7.12 statement they will be bound by, Dr. Carney pointed out, not about which tenure code will cover them.

It was agreed that the Committee would have a conversation with Tracy Smith in the General Counsel's Office.

2. Procedures for Reviewing the Performance of Tenure-Track Probationary Faculty

The Committee turned its attention back to the Procedures document. The Committee agreed that "department" would be changed to "unit" throughout the document and would be defined to cover department, division, school, etc., and that "senior academic administrator" would be changed to "Senior Vice President for Academic Affairs and Provost." The Committee also agreed to several substantive changes.

-- The definitions of research/creative work, teaching, and service would not apply to a probationary faculty member hired before July 1, 2007, if he or she opted to be evaluated on the basis of the tenure code in place when hired.

-- These Procedures would apply to all probationary faculty irrespective of the date they were hired. Professor Mowitt inquired if the decision raises a legal question; Dr. Carney said she believed not because the Procedures do not make anything more stringent than what is in the tenure code, and in fact they provide probationary faculty members with greater protection.

-- The Committee agreed to incorporate the previous item #12 into the voting-procedures provisions of the Procedures: "Attendance and participation at tenure review meetings are important parts of the duty of a member of the tenured faculty. The head of the department must schedule the time and place of the formal meeting of the tenured faculty well in advance, and must notify all tenured faculty of that time. In ordinary circumstances, at least one month's notice of the meeting should be given to assure that tenured faculty members can attend the meeting."

-- The language about who is eligible to vote was clarified, especially in cases where faculty from other departments are drawn in for the purpose of a tenure vote: "Only members of the tenured faculty of the department have the right to attend or participate in the meeting and vote on granting tenure. To be eligible to vote, a faculty member must have reviewed the candidate's file. Prior to a specific tenure decision, however, permission must be sought in writing from the senior academic administrator for tenured faculty from other departments to participate and vote. This is particularly important in cases of candidates whose work encompasses multiple disciplines [or for other reasons that Vice Provost Carney will provide as examples]. The request must specify the probationary faculty member under consideration, the name(s) of those tenured faculty (and their tenure homes) who will be asked to vote on the candidate, and the reasons for including them. Authorization in writing by the senior academic administrator must be obtained for all exceptional participation and voting. If the department head is a member of the tenured faculty, he or she may participate and vote, but has no additional tie-breaking vote."

Although it may not be enforceable, and serves more as an admonition than a rule, the Committee agree that a sentence should be inserted providing that individuals who have not read the tenure candidate's file are not eligible to vote on whether to grant the candidate tenure..

There are cases when faculty in a department temporarily may not vote on tenure cases, Dr. Carney said, such as when there is an interim chair from outside the department. Professor Anderson asked if the probationary faculty member may make the request for outside faculty to be involved. Dr. Carney said he or she may; the passive voice of the Procedures, with the agent deleted, allows anyone to make a request.

What about the case when the probationary faculty member does not want the broader committee, believing it may prejudice his or her case, Professor Kruttschnitt asked? There would be a discussion with the Provost's office, Dr. Carney said, and the Provost would be the final arbiter.

What is the minimum number of tenured faculty required to have a vote, Professor Abul-Hajj asked? In most cases, Dr. Carney said, a request to supplement a department's tenured faculty is in order to get the number up to three (or more).

Professor Clayton suggested the Procedures might stipulate who could make a request for a broader committee. Dr. Carney said ultimately the request should come from the dean; the dean's office should not be circumvented. There were about 5-6 such cases last year, two of which were because a department was too small (these are often promotion rather than tenure cases). The candidate has always agreed to the broader committee; these are not arbitrary decisions by the dean. The candidate does not have the authority to select the faculty who will be on the broader committee but he or she can give an opinion on whether the proposed members can reasonably review their work.

Does the request originate with the dean, Professor Clayton asked? It does not, Dr. Carney said, but it comes from the dean. There will be a problem if the Procedures get too prescriptive. Professor Mowitt said that the interdisciplinary hires are touchier; in those cases, the request should come from the candidate because the dean and senior vice president will not know if a broader panel is needed. This comes up more often when an interdisciplinary scholar is hired in a non-interdisciplinary department, Dr. Carney said, and in that case the Provost's office wants a memo of understanding indicating who will conduct the reviews of the candidate. The memo works best because these arrangements tend to be specific to the appointment, but they do want it clear from day one how the person will be evaluated. The dean(s) must know from the beginning. The memorandum of understanding also helps make it clear to the candidate how he or she will be evaluated.

-- The quorum rule was clarified: "A quorum must be present at the meeting at which the vote takes place. A quorum is defined as more than 50% of those faculty eligible to vote on a personnel question, except that those faculty who are not present and do not vote are not counted for the purposes of determining a quorum. Except as indicated below, the action of the department is based on the majority of those voting on the question. If there is a tie vote, the recommendation is in the negative. In the final year of the probationary period, a tie vote on the question of tenure creates an automatic recommendation for termination of the appointment."

-- The language about "super majorities" was clarified. "Ordinarily, a majority of those present and voting on a personnel question will take action for a department, if a quorum is present. A department or college may, however, require an exceptional majority (such as, for example, a 2/3 majority or an absolute majority of the members of the department) as a prerequisite for a recommendation for tenure. (See the tenure code, section 7.4 (d)). If it wishes to do so, it must adopt that rule well in advance of the meeting in which the tenure decision will take place, normally no later than the previous school year. Any rule requiring an absolute majority should also have a provision for excusing members who are unable to participate. All rules requiring special majorities must be reported to the senior academic administrator and the Academic Freedom and Tenure Committee. The rule may be adopted as part of the college or department constitution or as part of the rules adopted under 7.12. If such a rule is adopted, it must be included as part of the departmental statement required by section 7.12. If both the college and the unit have rules to this effect, the more rigorous requirement prevails. If the 7.12 statement is silent on the majority required, a simple majority is all that will be required if a quorum is present.

If a department votes to change the majority required, with corresponding change to the 7.12 statement, current probationary faculty may choose whether to be considered under the old or new rule."

Dr. Carney reported that more departments are adopting rules requiring exceptional majorities to approve candidates for tenure.

-- The context of the annual review of the probationary faculty member was clarified: "The process of reviewing a candidate's progress is continuous. It is intended to have an encouraging and nurturing function, although it is necessarily evaluative. Especially in the early years of the probationary period, the annual tenure-review is intended to point out to the candidate strengths and weaknesses, so that the strengths can be built upon and the weaknesses remedied. Three elements are essential to this process: information gathering, deliberation, and consultation with the candidate. The review is always to be conducted in accordance with the departmental statement required by section 7.12 of the tenure code."

Vice Provost Carney said it is disconcerting when the Provost's office is informed about annual reviews that do not correspond to the department's 7.12 statement. She said she is also troubled when probationary faculty are not given feedback that is based on the 7.12 statement.

-- Although no substantive changes were made to the language of the Procedures that refers to the inclusion of summaries of teaching and teaching evaluations, Committee members discussed it. Dr. Carney suggested that the Procedures refer explicitly to the Senate policy on student and peer evaluation of instruction, and reported that she is developing a set of best practices for peer evaluation. Professor Abul-Hajj inquired if the Provost's office ever receives files with no record of teaching evaluation. Dr. Carney said they do not but that there is tremendous variation in what colleges and departments submit. Some summarize the evaluations, some submit the original evaluations. She said that she was concerned about equity across the University and did not want different decisions because different data were available, which is the reason she will provide a best-practices document.

-- The language about the responsibilities of the candidate vis-à-vis the file was altered. Each probationary faculty member shall have the duty to inspect (1) the annual review file (items i through vi) annually and to assist in assembling it, and (2) individual evaluations contained in it; and a right to add material to the file or to make written comments. Material provided by the candidate should be identified as such.

The Committee discussed the annual review of the candidate by the tenured faculty and the implications of stopping the tenure clock. Dr. Carney said there is need for additional language in the Procedures to make clear how such individuals are to be evaluated, because it is clear that departments are unclear about what to do. The candidate's teaching, research, and service will be evaluated—stopping the tenure clock is not a leave—but a department may not say that a candidate has not made sufficient scholarly progress because he or she has stopped the tenure clock. The salary decision is based on the teaching, research, and service, but the candidate is to be given leeway on scholarly research. A department may not demand the normal level of scholarship and curriculum development. The idea that someone cannot be penalized is fuzzy, Professor Kruttschnitt said; one candidate has taken 6 years and one has taken 7-8 years. Dr. Carney emphasized that the candidate who stopped the tenure clock may NOT be penalized; the University cannot say it is OK to stop the tenure clock and then later say the candidate took too long. The candidate's file is considered as a six-year record, even if the period of time is 7-8 or more years because of stopping the tenure clock. This is a cultural shift for higher education, but if the University does not make that change it will lose talented people. Some people, in the back of their minds, think the candidate "got away with something," but there is a difference between imposing high standards and being flexible for family reasons.

Professor Clayton adjourned the meeting at 11:00.

-- Gary Engstrand