

Minutes*

**Academic Freedom and Tenure Committee
Friday, May 7, 2010
10:00 – 11:30
300 Morrill Hall**

Present: Karen Miksch (chair), Yusuf Abul-Hajj, Tracey Anderson, Arlene Carney, William Craig, Joseph Gaugler, Barbara Loken, Linda McLoon, Christine Marran, Paula O'Loughlin, Gary Peter, Terry Simon, Carol Wells

Absent: Barbara Elliott, Paul Porter

Guests: Professors Carol Chomsky and Tom Clayton

[In these minutes: (1) syllabus statement on academic freedom; (2) section 12 of the tenure code]

1. Syllabus Statement on Academic Freedom

Professor Miksch convened the meeting at 10:00 and reported that the agenda item on student academic freedom, with General Counsel Mark Rotenberg, had to be postponed because Mr. Rotenberg was called to participate in the University-Metropolitan Council light-rail mediation. The Committee can thus review again the syllabus statement in light of the language the 1967 AAUP statement that Professor Clayton brought at the last meeting.

Dr. Craig asked to what extent the University is bound by the AAUP statement. It is not, Professor Miksch said; Dr. Carney pointed out that the Committee could take sentiments from it without making an institutional commitment to the entire statement—it can refer to it.

The Committee spent time editing and revising the draft syllabus statement and concluded the exchanges by approving the following version for transmission to the Committee on Educational Policy (changes from the earlier version ~~struck out~~ or underlined):

Academic Freedom: Academic freedom is a cornerstone of the University. Within the scope and content of the course as defined by the instructor, it includes the freedom to discuss relevant matters in the classroom. Along with this freedom comes responsibility. Students are [should be] encouraged to develop the capacity for critical judgment and to engage in a sustained and independent search for truth. Students [should be] are free to take reasoned exception to the [data or] views offered in any course of study and to reserve judgment about matters of opinion, but they are responsible for learning the content of any course of study for which they are enrolled.¹ ~~Along with this freedom comes responsibility. At the University of Minnesota, students and instructors should expect their views to be challenged and we all have a responsibility to respectfully discuss divergent points of view.~~ Reports of concerns about

* 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.

¹ Language adapted from the American Association of University Professors "Joint Statement on Rights and Freedoms of Students"

academic freedom are taken seriously, and there are individuals and offices available for help. Contact the instructor, the Department Chair, your adviser, the associate dean of the college, or the Vice Provost for Faculty and Academic Affairs in the Office of the Provost. [Customize with names and contact information as appropriate for the course/college/campus.][With attribution of the new language to the AAUP.]

2. Section 12 of the Tenure Code

Professor Miksch welcomed Professors Chomsky and Clayton to the meeting to join Vice Provost Carney in a discussion of section 12 and other parts of the tenure code. She thanked the two of them, and Dr. Carney, for agreeing to serve as an ad hoc subcommittee to look at the tenure code, if amendments are to be proposed, for changes that are needed or updates that should be made. The main focus of the discussion today is the Provost's memo about moving faculty appointment homes from one unit to another. [The Provost's 2007 memo to the Twin Cities deans read as follows, between the * * *]:

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Date: August 20, 2007

To: Twin Cities' Deans Council

From: E. Thomas Sullivan
Senior Vice President for Academic Affairs and Provost

Re: Policy for Faculty Moving Appointment Homes

Policy for Faculty Moving Appointment Homes

According to Section 3 of the Regents Policy on *Faculty Tenure*, faculty at the University of Minnesota may have either a regular appointment (with indefinite tenure or with a probationary period that leads to a decision concerning indefinite tenure) or a term appointment (with a contract that is date specific). This policy specifically applies to regular faculty only, either those with indefinite tenure or those on a probationary period.

Faculty with regular appointments are hired into a department, school, college, or division (hereafter called "unit" in this policy) that can be considered their appointment home. Typically, faculty spend their academic careers in the same unit for the length of their career at the University of Minnesota. Two situations may cause a change in academic appointment homes. The first is a programmatic change at the University as described by *Section 12. Programmatic Change* of the Regents Policy on *Faculty Tenure*. Section 12.2 states that: "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..." (Section 12. 3 Reassignments). The interpretation of this section is that tenure is held at the University of Minnesota and not at the unit level. Hence, the tenure home of faculty is the University of Minnesota and not the appointment home.

The University experienced broad programmatic changes as part of the recent Strategic Positioning efforts beginning in 2004. Faculty in several colleges moved as units into other colleges according to *Section 12. Programmatic Change* of the Regents Policy on *Faculty Tenure*. The faculty of the destination colleges did not vote on the question of individual faculty or groups of faculty joining the college.

The second type of academic appointment change may occur at the initiation of an individual regular faculty member, one either with indefinite tenure or with a probationary appointment. These requested changes may be within a college or across colleges and may be motivated by disciplinary or interdisciplinary changes in a faculty member's scholarship or creative work as well as changes within the original appointing unit. Section 4 of the Regents Policy on *Faculty Tenure* provides guidance about the nature of these changes and the procedures for changing academic appointment homes. Individual faculty movements also occurred as a result of the Strategic Positioning process.

A faculty member who wishes to move from one college to another may apply directly for an open and advertised position in the potential destination unit. In that case, the faculty member becomes part of the search process that is in place for the advertised position. He or she would send the required research and teaching materials for consideration, participate in the interview process with other external candidates, including providing a colloquium, and accept an offer that might be extended. The faculty member interviewing in another college should inform his or her department head and dean about the potential move to another unit. In this case, if a faculty member is hired by a new unit and new college in an advertised search, the salary of the faculty member making the move would be covered by the destination college who had already allocated salary dollars to cover a new hire. As in all hiring decisions, the faculty of the hiring unit and the dean of the hiring college determine whether a faculty member will receive an offer of a position. If the faculty member moving from another college already has tenure at the University of Minnesota, then he or she will be hired at a rank with tenure. The destination unit does not conduct a new review for the conferral of indefinite tenure.

A faculty member who wishes to change colleges and units without the occasion of an advertised search in the potential destination unit should contact Arlene Carney, the Vice Provost for Faculty and Academic Affairs, in the office of the Senior Vice President for Academic Affairs and Provost initially. The faculty member should provide a current curriculum vitae as well as short research and teaching narratives. Based on the discussion at the initial meeting, the Vice Provost will contact the dean of the college to which the faculty member wants to move and will provide the written materials for his or her information. The dean of the potential destination college will review the materials and will provide a copy of them to the potential new home department. The faculty of this department will conduct an initial review of the curriculum vitae and other materials. The chair or head of that unit may invite the faculty member for a discussion about his or her desire to move colleges and units. The faculty of the potential destination unit may invite the initiating faculty member to give a colloquium and to interview formally with the faculty, staff, and students of the potential receiving unit. Following this interview process, the faculty of the potential receiving unit vote on the hiring of the faculty member who wishes to move from one unit to another. In contrast, the faculty of the potential receiving unit may review the material provided and determine that the faculty member is not a match for the goals and direction of the

department without a formal vote. Regardless of the decision of the faculty of the potential receiving unit, the dean of the potential receiving college has the authority to review the hiring proposal of the unit and to make the final decision about the hire. If a faculty member wishes to change departments within the same college, discussion of transfer should be with the dean of that appointment home college.

For transfers that involve one of the colleges in the Academic Health Center, either as a home appointment unit or a destination unit, the units must consult with the Senior Vice President for Health Sciences and receive his approval. The final transfer to any new appointment home must be approved by the Senior Vice President for Academic Affairs and Provost.

The principles and considerations underlying the move of a faculty member to another unit are: 1) fit of the faculty member with the mission and goals of the receiving unit; and 2) merit of the faculty member related to standards of hiring, merit, promotion, and tenure within the receiving unit.

Both deans of the appointment home college and the receiving college must agree on the transfer of appointment with a memorandum of understanding that is signed by the Senior Vice President for Academic Affairs and Provost and the Vice President for Human Resources (as well as the Senior Vice President for Health Sciences for transfers involving the Academic Health Center). The salary and fringe benefits for the faculty member are the responsibility of the receiving unit. These may be offset by tuition generated by course offerings, sponsored funds, or endowments. In addition, the dean of the appointment home college may transfer some funds with the faculty member in some situations; this is not a required part of the transfer. The decision to accept or not to accept the faculty member's transfer should not be determined by financial issues but rather by the criteria outlined above. However, the financial support for the transfer must be resolved before any transfer is complete.

This policy is effective as of 8-20-07.

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Professor Chomsky began by explaining her involvement in the process. She served on this committee for a number of years (when it was the Tenure Subcommittee of the Committee on Faculty Affairs) and chaired it for two years, and she has also been involved in the drafting of a lot of the policies at the University, including the language of the tenure code and the procedures governing treatment of probationary faculty.

Vice Provost Carney explained that when they talk about changes that might be made to the tenure code, they are not distributing proposals because they do not wish to open the code for amendment at this time: Faculty had been concerned about invoking section 4.5 of the code and discussions of financial stringency and fiscal emergency and so on. There is no reason to raise any additional concerns about potential changes at the end of the term. Moreover, they are not even close to having final draft language for the Committee to consider—and this Committee has to approve any changes that are to be proposed.

Professor Chomsky echoed Dr. Carney and said that except for section 12, the ad hoc subcommittee does not even have preliminary drafts. They also do not want to make changes piecemeal, so they will take the time to produce recommendations in measured fashion. They are looking at where clarity is needed because there has been confusion in implementation, and also at places where, after years of accretion, they are no longer sure what the language means. There are also areas where changes are legitimately required. They are not proposing any changes; that responsibility falls clearly in the purview of the Committee; they are only drafting to offer the Committee text to consider. Dr. Carney commented that there are issues showing up as part of the review of promotion-and-tenure files, where things that they thought would proceed in a certain fashion have not, where the tenure code has not operated as intended. They are, Professor Clayton summarized, aiming for clarification, not major change.

Professor Abul-Hajj commented that it would be premature for this Committee to do very much because the subcommittee has not done enough yet. The subcommittee will later have language to suggest, Professor Chomsky said, and may in some instances have questions for the Committee in advance of drafting. But the subcommittee needs to clarify what the issues are before they can have a reasonable discussion with the Committee. They believe, however, that the section 12 problems are of the greatest concern right now.

Professor Miksch reported that she has asked members of the Women's Faculty Cabinet and the Committee on Faculty Affairs to identify problems with the tenure code or the associated procedures and to let this Committee know. She and Professor Elliott will invite people to the Committee if there are concerns.

With respect to section 12 and Provost Sullivan's memo, Professor Chomsky said, they looked at section 12 and thought it needed to be clearer on the locus of tenure, which has been made clear in the Provost's memo: Tenure is in the University, not the unit. That point is not clear enough in the code, even though it is a critical foundational principle. Second, there are inconsistencies between what they believe section 12 covers and what the Provost's memo suggests it covers, though there are not differences in the substance. Section 12 by its language seems to be limited to moves that must occur when a program is discontinued, and does not cover appointment-home changes that occur when entire units are moved with all the individuals within that unit, as with mergers or changes within a college. When an entire unit moves, section 12 is not implicated. It should be made clear somewhere, however, what happens when a unit moves; that may belong in the tenure code or it may belong in a provost's policy memo. Clarity could also be increased by specifying that, when a program is discontinued and section 12 is invoked, the University should first seek to find an affected faculty member a place to teach in his/her own discipline, and then move to other possibilities. The basic contours of section 12 seem right: if a program is discontinued, the University must try to find a place for affected faculty members, but the individuals also have a responsibility to be reasonable. What the tenure code does not say, but perhaps should, is what happens after a move when the individual is considered for promotion: what 7.12 statement governs? Dr. Carney commented that some units have believed that when a tenured faculty member moves to their department, they can put the person through another tenure review, but they cannot. Tenure is held at the University level. When individual faculty members have changed their primary department, each person moved with a specific Memorandum of Understanding; the faculty member signs off agreeing to be subject to the receiving unit's 7.12 statement for evaluation for promotion to professor, if she/he is already a tenured associate professor

They need also to think about whether language is needed in section 12 to deal with a forced move necessitated by the movement of an entire unit, as occurred in the Wave One changes, and the possibility that an individual will not be happy with the new assignment, Professor Chomsky said. Should the tenure code say anything about that? Or not, because all of those are individual cases? The core of the concern is not about section 12 itself (the existence of rights based on tenure being in the University), but about implementation: Who decides and how can one be sure it is done reasonably for each individual? People wonder if, with the financial problems facing the University, units could move but faculty members from the old unit might not fit in the new one. What should be said on this issue? Is the memo sufficient so that people know that there is a plan regarding the process in place to handle requests from individuals?

Dr. Carney reported that the memo is sent not only to the deans but also the associate deans for faculty. Professor Miksch said it might be useful to send it directly to the faculty in order to make the process as transparent as possible. She noted that she was involved in one of the Wave One college changes and she never saw this memo.

Professor Gaugler said it seemed to him the discussion was more procedural than policy and that perhaps the memo could be incorporated in the procedures document. Professor Miksch observed that section 12 has no procedures and said that the Provost's memo could serve as the basis for a procedures document. She suggested that the provisions not be put in the tenure code because they could need amending too often.

This concern also becomes significant because it intersects with budget issues, Professor Chomsky commented. That was a problem with the Wave One moves: They were to be based on merit, not financial considerations, but the memo also says that financial arrangements should be set before the move is approved. That is a problem with the budget model, Professor Miksch commented. It is the problem with any budget model, Dr. Carney commented. There are no salaries banked in central administration that can be used when individuals move from one department to another. When a faculty member moves to a new college, the dean of that college receives one thing: The bill for the salary. The dean needs to be reassured there will be additional funds coming in to help pay for the position from sources such as tuition, grants, etc. This was true under the previous budget model as well.

Professor O'Loughlin said she was glad that this discussion is occurring and that the Senate Judicial Committee will also supply ideas about where clarification is needed.

Professor Simon said that this is a policy matter, important to some, and it is contained in a memo that is three years old. There is no track record of the reviews that went through. This is so important that it should be somewhere accessible. Professor Miksch recalled that Professor Chomsky came to the Committee because she had interviewed people involved in moves. There are two points where procedures could clarify tenure policy at the University, and provide more transparency and clarity on what terms mean. Section 12 was written under the old budget model, which could be a source of confusion. Should there be procedures? Professor Simon said that the memo seems too casual. Professor Marran said it is important that the procedures address in more detail what happens when a unit moves and how such a move affects probationary faculty.

They had experience handling these kinds of moves during the last part of strategic positioning, Dr. Carney reported. Probationary faculty whose units moved were evaluated by the standards of the 7.12

statement under which they were hired (e.g., when General College was closed and the faculty moved to Postsecondary Teaching and Learning). Probationary faculty will never be put at a disadvantage, suddenly changed to different standards. On rare occasions, probationary faculty members want to change the 7.12 statement by which they are evaluated, which is why a Memorandum of Understanding is used in every case. The MOUs are very explicit and remind the unit what they are voting on.

Professor Marran said that the Provost's memo focused on fit. Probationary faculty can ensure that the right 7.12 statement is used, but the new department could bring a different approach to a field. So one could say that one must follow the 7.12 statement the probationary faculty member brought along, but the disciplinary focus of the new dept could be very different. What happens when a probationary faculty member is thrown into different ways of discussing things, even if the 7.12 statement is the same? Professor Miksch recalled that she went into a new college and had to explain her research to colleagues.

Professor Chomsky agreed that there are important issues in the memo. It needs to be made clear which parts address policy and which address procedures, and it should also be made clear that for the most part, the need is to clarify procedures to implement the policies already in place. Having a more public airing of the memo will communicate that the central administration is trying to help faculty who want to change departments. The memo would need to be generalized, to say it is to help someone move and that anyone can make the effort to do so and seek assistance. The current memo is more specific because it was designed to address changes at a particular point in time. It is sensitive when someone wants to leave a department because the move may or may not work, and it is helpful for faculty to know that someone can help. Based on what Vice Provost Carney said, perhaps there should be tenure-code language to the effect that faculty members should not be disadvantaged when they are forced to move, so they should be able to retain the 7.12 statement under which they were hired. That is what happened with the Wave One colleges but it was not written down as a general matter, only in the individual MOUs. It may be that that concern—not disadvantaging faculty who move—is one that must be looked at by central administration when they review individual files, to be sure faculty are not disadvantaged because they are in a different unit. It needs to be acknowledged that there may be other elements to consider in a review of faculty members who change departments.

One critical issue is when tenured faculty, in voting on a candidate for promotion and tenure, use personal standards rather than the standards in the 7.12 statement, Dr. Carney commented. This can be the road to the Senate Judicial committee if there is a tenure denial. Each year she reminds departments of this issue when she sees statements or internal letters in the files that are not based on the 7.12 statement. Some departments do very well, and she reminds departments about following the criteria in the 7.12 statement even when the recommendation is a positive one, because even then there can be elements of the file that suggest the evaluation went beyond the 7.12 statement. The question is how to get faculty to follow only the 7.12 statement.

Dr. Carney said, in response to a comment from Professor Abul-Hajj's supporting Professor Simon, that she and the Provost agree that this is an important document that needs to be in a place where it can be a reference, perhaps a set of procedures. This was all new at the time the memo was written, but the Provost would like to see procedures. Professor Clayton commented that whenever a procedures document is duly processed, it should be enshrined online and a memo sent to all faculty with a cover note and a link. Dr. Carney reported that since the memo originally went out, any time a faculty member approaches her and says "I'm thinking about moving. . . ," she sends the person a copy of the memo. Professor Chomsky suggested that the procedural elements of the memo could be abstracted and sent out

to deans, with a cover memo that talks about and introduces the subject, so it could be provided to faculty members, while still putting the provisions themselves in the full set of procedures, so they will be retained in a place where they will be found in the future. Dr. Carney agreed and said that excerpting would be preferable to sending out the entire procedures document when only that portion is relevant to an inquiry.

Professor Miksch recalled that in the fall the Committee talked with Provost Sullivan about the separation of the promotion and tenure decisions in the procedures, which appears to confuse some units; in some cases a department forwards different votes on promotion and on tenure, which should not happen. Both Professor Chomsky and Vice Provost Carney agreed that the code needs to be clarified on that point; Dr. Carney said the problem is spreading, and in some cases the department vote goes one way on promotion and the other way on tenure. There should not be two votes, Professor Clayton concluded. With one caveat, Dr. Carney responded: In a number of cases, a department may vote on tenure only because someone may be an untenured Associate Professor (e.g., the Law School hires new faculty at that rank, and sometimes other units do so as well, such as when someone is hired from a research institute, or a school focused primarily on teaching). The hiring unit may want to see evidence in the area that has not been developed before it recommends the awarding of tenure.

Committee members discussed the potential impact on morale if the Provost's memo were distributed to all faculty members at this time. There could be a fear that many administrative changes of units—that will be implemented—are being prepared behind closed doors. Dr. Carney said she had no notion of any such administrative unit changes being proposed centrally. This is why the Provost asked each college to prepare its plan for the future with a blue ribbon committee. Colleges may well propose some changes in its departments/units but these changes are not being proposed by the Provost. That is why it would be best if the Committee moved to amend the procedures document, Professor Chomsky said, so it will be seen correctly as the Committee doing its job of regularizing the procedures rather than as some move by the administration independent of the Committee.

What about forced change when a unit is closed, Professor Loken asked? Section 12 covers those individuals, both Professor Chomsky and Dr. Carney said. Professor Chomsky said that section 12 identifies the responsibility of the administration but it could perhaps be supplemented so that it is clear where the responsibility to implement, to find a comparable position for tenured faculty, resides. The Provost's memo was the result of early changes in the Wave I process, Dr. Carney added, about what worked and what did not, but it did not address the issue of closing departments, only moving them. There was more group movement at the time the memo was prepared. Professor Loken said it would help if Dr. Carney's experience, and what she learned, were put down on paper in procedures.

Dr. Craig commented that as he has listened to the discussion, it seems that the letter contains some basic principles and they should be incorporated into the code. One principle is that a faculty member will be treated equitably, Dr. Craig said. They looked closely at section 12 during strategic positioning, Dr. Carney said, and adhered to it. One question for them is what should be where, Professor Chomsky said. The fact that tenure is in the University is only in the memo, not in the code, Dr. Craig said. Professor Chomsky agreed that the point should be in code.

Professor O'Loughlin said she hoped this conversation continued. The question of where matters are located in the documents is ripe with significance for faculty. She thanked the three guests for taking the lead and agreed that the procedures document is the place to start.

Dr. Craig said that documents like the Provost's memo should be available online; is it not? Dr. Carney reported that it was on the Provost's website but somehow got removed; she said she would see to it that it reappears. Dr. Craig was also concerned about the accessibility of the letter to someone researching the details of the tenure code.

Professor Miksch summarized the two principles she had heard enunciated: Tenure in the University and faculty should not be disadvantaged when made to move. These sound like items that should be in the tenure code, she said. Are there others?

Dr. Carney reported that there has been a series of communications over the last two years for people who chose to be governed by a new 7.12. She has received positive feedback as a result, and there has been no disagreement, just some questions for clarification—which is surprising for something that has been sent to hundreds of faculty members. The communications are sent to each faculty member, the chair, and the dean, and include the old tenure policy and 7.12 statement, the new policy and 7.12 statement, with the different sections highlighted, and two MOUs; the faculty member indicates he or she has read the old tenure policy and wants to be bound by it, or the faculty member indicates he or she wants to be governed by the new policy. The faculty member decides and her office arranges it with a lot of signatures and copies to everyone involved. The system seems to have worked out well, and faculty members report that they understand the process. What if one's college or department is closed? Can the faculty member's original 7.12 statement be used for tenure and promotion? Dr. Carney indicated that this happened in the case of the General College, which is the only recent example. As noted above, faculty hired in General College have been evaluated to date with the old General College 7.12 statement. With the exception of General College, whole departments moved to other colleges with their 7.12 statements. They were not closed.

Over time, all of this will disappear as new faculty members are hired under the new 7.12 statements, Professor McLoon observed.

Professor Miksch asked Committee members to send her their thoughts on fundamental principles related to tenure and promotion policy over the summer and said the conversation would continue in the fall. The Committee can consider what should be memorialized in procedures and what principles should be enshrined in the code at that time. She expressed appreciation to Professors Chomsky and Clayton and Dr. Carney for their willingness to work over the summer, so the Committee will have some text to respond to in the fall. Committee members gave the three a round of applause for their work thus far.

Professor Miksch adjourned the meeting at 11:30.

-- Gary Engstrand