

Minutes\*

**Academic Freedom and Tenure Committee  
Friday, October 19, 2012  
10:00 – 12:00  
300 Morrill Hall**

Present: Carl Flink, Karen Miksch (co-chairs), William Bart, Phil Buhlmann, Arlene Carney, William Craig, Teresa Kimberley, Jessica Larson, Gary Peter, Carol Wells

Absent: Barbara Elliott, Karen Ho, Brian Horgan,

Guests: Lindsey Heffern (University Relations)

[In these minutes: (1) academic freedom and responsibility implications of social media postings; (2) proposed changes to the Education Abroad Opportunities: Addressing Health and Safety Risks policy; (3) tenure policy section 12 procedures (Programmatic Change)]

**1. Academic Freedom and Responsibility Implications of Social Media Postings**

Professor Miksch convened the meeting at 10:00 and welcomed Ms. Heffern. She distributed copies of a set of slides dealing with social media postings and academic freedom and responsibility as well as a link to an article by Professor Neal Hutchens from the *Journal of Student Affairs Research and Practice* titled "You Can't Post That . . . Or Can You? Legal Issues Related to College and University Students' Online Speech." She said the discussion would first focus on students and then faculty and staff and the implications for University policy.

With respect to case law, Professor Miksch said, the courts do not make a bright-line distinction regarding what medium is used—orally in a meeting, outside on campus grounds, in a journal article, via email, or on a social media site, etc. There are different standards courts often use for students and for employees, but that speech occurs on a social media site does not generally matter to the courts—it is treated like a public forum.

In terms of student speech, there is a tension between free expression and student conduct codes designed to promote a learning environment free from harassment. Outside of the instructional context there is greater protection of speech, whether online or face to face. Within the instructional context there is more instructor and institutional authority to regulate speech based on academic decision-making; the courts will defer more to the instructor or institution in the instructional setting. The Hutchens article discusses the Hazelwood case, a U.S. Supreme Court case that dealt with K-12 education but that the courts have applied to higher education as well. The Court held that if speech is curriculum-related, there may be reasonable restrictions on student speech to meet pedagogical objectives. The further away from the class setting speech is, the more the law will require a public university to have very good reasons to regulate it. But there is no bright line, Professor Miksch repeated.

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\* 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.

One of the most recent cases dealing with student speech and social media was *Tatro v. the University of Minnesota*, Professor Miksch noted. A student enrolled in Mortuary Science placed posts on Facebook indicating she wished to use an embalming tool as a weapon and referred to inappropriate behavior with cadavers. The University held disciplinary proceedings and imposed sanctions on the student, including a failing grade in an anatomy laboratory course. The student filed suit, arguing that the sanctions violated her First Amendment rights. The Minnesota State Supreme Court, in a unanimous decision, held that the University "did not violate the free speech rights of Tatro by imposing sanctions for her Facebook posts that violated academic program rules where the academic program rules were narrowly tailored and directly related to established professional conduct standards."

The *Tatro* case dealt with a gray area between student speech and professional standards, Professor Miksch said. Facebook is not the classroom but the comments were class-related, and the University followed all the procedures it was supposed to in order to ensure due process. It is an important policy goal that students feel they are in a safe learning environment, an issue the *Tatro* case raised because of some of the Facebook comments. The Minnesota Supreme Court seemed to follow the same rule as other courts: The closer the speech to the instructional setting, the more the institution may regulate it.

What professional standards, Dr. Craig asked? *Tatro* was a student. Professor Wells said this is about instilling professional ethics, and in addition the comments about the cadavers could hurt the University's cadaver-donor program. Professor Miksch said that the latter concern is not something the courts take into account. Dr. Carney said that professional programs—graduate and undergraduate—have standards to which they expect students to adhere. So it is the profession's code, not the University's, Dr. Craig concluded. It is, Professor Miksch said, but the Student Conduct Code refers to them. There was another earlier case (in another state) where the court concluded that the language to "act professionally" was not clear enough to give students warning. But if an institution gives clear notice to students in professional programs, it most likely is on firm ground in insisting on adherence to the standards. In the *Tatro* case, the court found that the standards were clear and provided notice to students of what was, and was not, considered professional conduct.

Mr. Peter asked if the same standard applies in an online discussion forum in a course. Then there are just general University standards because the course is not related to a professional program, it is just sponsored by the instructor. Professor Miksch said she believed that the Student Conduct Code is specific about not disrupting the learning environment. An instructor would be held to reasonable regulation tied to pedagogical purposes and the syllabus would have a link to the Student Conduct Code.

It was noted that an on-line forum on Moodle, for example, is part of a course and within the instructional context. Professor Miksch agreed. Have the courts ruled on it? They have not, but Moodle is used as if students were in a classroom together and it is part of the course.

Professor Miksch next noted that California and Delaware prohibit higher education institutions from requiring student athletes to share their social media passwords while other athletic programs have been in the news for requiring athletes to allow university officials to view a student's social media sites. These efforts go to Professor Wells' comment that universities have a brand and do not want student-athletes to do anything embarrassing. This is an area where one might see athletic policies applied to other students in the future. One question is how institutions would monitor social media websites.

Professor Miksch asked Ms. Heffern if the University of Minnesota has a social media policy. Ms. Heffern responded that it does not but that it does provide guidelines to students, staff, and faculty regarding social media sites. She noted that University Relations' social media guidelines don't refer students to the Student Conduct Code; currently they refer people generally to the University's code of conduct among other official University policies (e.g., FERPA, confidentiality, copyright).

Professor Larson said that some institutions forbid all students from having a face-book page. Professor Miksch agreed and added that there have been reports of institutions prohibiting student athletes from using social media, but it is problematic because it could be protected speech. Some in higher education say instead of trying to restrict the use of social media, we should be discussing the impact and educating our campus community.

As for employees, Professor Miksch said, some states have applied the *Garcetti* standard: If speech is part of official job duties, it is not protected by First Amendment, but private speech on matters of public concern is protected by the First Amendment. [The U.S. Supreme Court ruled, in *Garcetti*, that an employee who criticizes his/her employer may be sanctioned or terminated because of that speech.] At the University of Minnesota, at the behest of this Committee, the Regents' Academic Freedom and Responsibility policy was changed so that it now protects speech related to official job duties as well as private speech on matters of public concern. So if someone makes a comment critical of the University, the academic freedom policy protects that speech (e.g., a critical comment made at this meeting). But administrators (deans and up) can be held to a different standard, so Vice Provost Carney's speech in her role as an administrator might not be protected by the University's policy (although her speech related to teaching and research would be). Even though there was a footnote in the *Garcetti* opinion indicating the Supreme Court was not deciding whether the decision applied to higher education, there are cases where courts are doing so, holding that faculty and staff are not protected by the First Amendment or academic freedom when they are critical of their institutions.

So when faculty and staff speak on a public issue, they should indicate they are not speaking for the University, Professor Bart asked? That is correct, Professor Miksch said, and the Academic Freedom and Responsibility policy requires such a disclaimer and the Committee provided the language. Often that disclaimer is edited out, Dr. Craig observed. Even if it is, no one will be fired for their speech, Dr. Carney commented. What also happens, Professor Miksch observed, is that someone may send a letter to the editor or write an op-ed piece and not indicate his or her University affiliation—but the newspaper may find it out and note it anyway.

Professor Flink said that *Garcetti* is a complicated case. It is like a liability waiver; it does not mean one waives one's rights. Whenever one uses free speech to address a leader, there is a risk because they have power and they have rights; the attorney in the *Garcetti* case [the one who lost his job because of criticisms of his employer, the Los Angeles District Attorney] was taking his career in his hands. Professor Miksch agreed that even though the University's Academic Freedom and Responsibility policy tries to take care of the *Garcetti* holding, because it wants a free exchange of ideas so the institution develops better policy, free speech is never absolute. But the University's policy puts employees in a stronger position. She noted that the Hutchens article cites the case of a student teacher who violated a school rule and was "friends" with her students on Facebook and had a photo of herself on the site with a caption about being drunk; the court held that those comments were far from the classroom setting and treated the student teacher as an employee—and determined that she could be removed from her position.

But K-12 teachers are treated very differently in terms of what they can say in the classroom because they are working with children, Professor Miksch added. The rules are different for university faculty.

Professor Miksch reported that some institutions have social media policies for students. Those policies must provide clear notice to students about standards, they cannot limit protected speech, and there is a question about how they can be enforced. And what about social media policies for faculty and staff? Institutions may say that when people set up sites, because they are using university servers, the institution should be able to establish controls. The courts have generally not agreed, concluding that the institutions have set up a public forum site.

Legal scholars have asked how social media policies can be enforced. Usually one finds out from a friend of a friend of a friend about something on a social media site, which is what leads to institutions requiring student-athletes to provide passwords to coaches or others in the athletic department. Professor Miksch said she would not want to see such a requirement at the University because it undermines the educational environment. Who has the time to enforce such a policy, Professor Larson asked? Professor Miksch agreed that it is time-consuming and said most institutions have moved away from such policies. This Committee has also talked in the past about how any employment-related speech is public; before anyone hits the "send" key, he or she should think about whether they want the message to be on the front page of the newspaper. People should not self-censor, but if they would not say something to someone's face, why would they put it in a message?

Institutions have employee codes and student conduct codes, so some are asking if they should develop a social media policy. Ms. Heffern reported that the University has a site, <https://www.ur.umn.edu/brand/requirements-and-guidelines/social-networking/index.php>, that addresses the marketing aspects of social media, how to establish social media pages, and provides loose guidelines about what should be on them. The site links to the copyright policy, the Code of Conduct (for employees), and confidentiality and privacy rules—it provides a set of best practices. Since social media are so new, they will be slow to come into University policy; she said she would look at University Relations' current social media/networking guidelines and make updates as necessary to clarify some of these emerging issues. When it comes to legal precedent, there are not many, and it is best to refer to the codes of conduct the institution already has in place. Professor Miksch said that if one puts a post on Facebook that identifies a student, for example, that violates FERPA, and there is a problem even it is a private social media site. The guidelines are already there; class lists are already private. One cannot post grades on one's office door or on a Facebook page

There are cases coming down differently on *Garcetti*, Professor Miksch reported, so it is possible there will be a Supreme Court decision on higher education about whether speech is protected for employees of public higher education institutions. But that will not necessarily help with the issues associated with social media.

Professor Bart commented that one challenge the University is facing is that in certain departments and colleges there is a lot of encouragement for faculty to use new technology—but there is no consideration of the legal consequences of the use. The encouragement needs to be tempered in workshops and the like, and what the Committee is discussing today should be communicated to deans and department chairs/heads.

Students are the biggest violators, Professor Larson commented; how does the University make them aware of the potential problems? The Student Conduct Code does work; she had to use it and students were sanctioned because of harassing/threatening behavior. The University may need to say that the Code applies to social media. Professor Buhlmann said that is less about setting new rules because there is no difference between the newspaper, talking on the Mall, and using social media.

Professor Flink said that one must realize that those under 30 have very different notions about privacy and what one posts on social media. It almost seems like questions of free speech were much more contained and neat before the advent of social media (although they were not). And Facebook is not under a university's control, Professor Miksch said, so it cannot always shut down a site, even though it may not want something on it. The situation is tricky because most social media sites are third parties.

Professor Kimberley said the question is less about controlling and more about education and the situation will continue to evolve. The bigger consideration is what the University is doing to educate students about what it means to be a professional and about how there is a difference between the public and private persona and how they should behave beyond what is in the manual. Professor Miksch agreed. Professor Larson said that Morris faculty put the official policies on their syllabus (e.g., email is the University's formal notification system and students are responsible for information in messages they receive). The use of social media could be another policy, because every four years there is a new group of students entrenched in a laissez-faire approach to social media.

Professor Miksch said the Committee needs to think about what else it wishes to do, if anything. It should not just drop the matter; how can it be sure the University is educating students about social media? And what is the Committee's function, Professor Flink asked? Is it concerned with the legalities and protecting the University? Or about educating the larger community? Sometimes these discussions seem to revolve around immunizing the institution, which, as an artist, makes him nervous. The Committee needs to define its goals as it wrestles with the question. It also needs to understand what the University is doing now, Professor Kimberley added.

## **2. Proposed Changes to the Education Abroad Opportunities: Addressing Health and Safety Risks Policy**

Professor Flink now asked Committee members to review the draft proposal for changes in the language of the Education Abroad Opportunities: Addressing Health and Safety Risks policy (the new language is in CAPS):

### **Travel Warnings and Suspension of Education Abroad Opportunities**

The International Travel Risk Assessment and Advisory Committee (ITRAAC) is responsible for deciding whether to suspend an education abroad opportunity sponsored by the University when a significant health or safety concern is raised regarding the opportunity. FOR UNDERGRADUATE STUDENTS, Prior approval of the Committee is required for any education abroad opportunity involving travel by University students to a location subject to a travel warning from the State Department. FOR GRADUATE STUDENTS, THE COMMITTEE MAY ISSUE AN ADVISORY OPINION BUT THE FINAL DECISION ON TRAVEL IS MADE BY THE GRADUATE STUDENT'S ADVISER AND DEPARTMENT CHAIR (BOTH MUST CONCUR). The Committee's role, composition and decision-making criteria are outlined

in Administrative Procedure: Suspending Education Abroad Opportunities.

#### Individual Student Action

Students who choose to participate in a non-University sponsored education abroad opportunity in a country, region or area where the University has suspended its education abroad opportunities must take a leave of absence from the University to do so and cannot be registered for any University credits during this period. Any student who chooses to participate in a non-University sponsored program in a country, region or area where the University has suspended its programs does so voluntarily and is acting outside the control and responsibility of the University. Students on leave of absence from the University are not eligible for financial aid from the University. GRADUATE STUDENTS WHOSE TRAVEL HAS BEEN APPROVED BY HIS OR HER ADVISER AND DEPARTMENT CHAIR ARE NOT SUBJECT TO THE PROVISIONS OF THIS PARAGRAPH.

[And corresponding changes in other parts of the policy.]

Professor Miksch recalled that this issue originally came to the Committee's attention because faculty members from Political Science visited the Committee and expressed concern because they had doctoral students who wished to do research in countries on the State Department's travel warning list and who needed to obtain approval from ITRAAC. The Committee then heard from ITRAAC members on how the process works. The same policy applies to graduate and undergraduate students.

Some institutions do not allow any travel to countries on the State Department's list, Professor Miksch said. Some, like Berkeley, do not require approval for graduate-student travel. The question the Political Science faculty raised was whether the same policy should apply to undergraduates and graduate students doing field work or dissertation research—whose research may involve war or conflict. The Committee talked about academic freedom for the graduate student and the adviser (in the case of the latter, how could advisers recruit graduate students if their travel could be restricted?).

Professor Miksch related that she and Professor Flink attended a recent meeting of the Senate Research Committee at which all of the ITRAAC members were also present because the Research committee had different questions about the policy. The ITRAAC members said the goal was not to deny travel but to be sure that students have a plan, an escape route if needed, and someone to call. Both Senior Vice President Jones and General Counsel Mark Rotenberg encouraged this Committee and the Research committee to develop language to explain the policy and the procedure to students.

Last year there was discussion and the Committee developed the proposed changes, which would bring the University more in line with the Berkeley policy. They would acknowledge a difference between undergraduates and graduate students and restrict financial aid and credits if a graduate student travels to risky locations.

One problem that the Political Science faculty pointed out was that the process took too long, Professor Kimberley recalled. Dr. Carney said that timing is often critical because the person submits the plan very late and needs overnight approval. The ITRAAC members indicated that they would respond more quickly. One issue on timing is knowing when to go through this procedure, Professor Miksch agreed. Dean McQuaid [an ITRAAC member and responsible for international programs and student

travel] said that her office does a lot of educating about what people must do. But students can also be told that their plans are not complete enough and they must do more—and may lose a fellowship or lose out on research opportunities because of the delay.

There was also concern about faculty liability, Professor Flink said, and one of the members of the Research committee pointed out that the language in the policy appears to be contradictory. While there was also concern that the same policy applied to graduate and undergraduate students, one Research committee member pointed out that a graduate student could be just out of undergraduate college, so it may be that the Committee needs to refine its proposal. Do advisers and graduate students feel shackled because the policy leans to undergraduates?

At the Research committee meeting, Professor Flink recalled, the ITRAAC members said that rejections are minimal; a concern of this Committee, however, has been that the policy is very legalistic and does not say that it is intended to help students and guide them on what to do. Another concern of this Committee has been that the policy may mean students just decide not to go where they want to, because they don't want to have to put up with the procedures required by the policy, so they are deflected from the research they want to conduct. It may be that the policy could deter some of the most interesting research.

Professor Buhlmann commented, apropos of the policy language, that an international student reading it would find it offensive. As a U.S. citizen and University citizen, the language is embarrassing, because it suggests Americans live in a safe world with respect to crime, for example, but it is a lot safer in Europe than it is here. Should the policy apply if a student intends to go to Switzerland? It may be that the policy needs a larger purpose statement. Professor Miksch agreed that the policy reads as if someone is "leaving the cushion of the United States."

Professor Miksch asked about the sense of the Committee. It has been invited to clarify the policy language to make it clear what the process is for. It could also advance the proposed policy change.

What happens if the graduate student's adviser and department chair approve travel and the student ends up in an Iranian jail, Professor Wells asked? Who is liable? Professor Flink said that ITRAAC wants to ensure that students have a plan; if the travel involves funding from the University, it has reason to say that the student must have a plan. But if one reads the policy, it is not a helpful place.

There is an analogy to the work she does, Vice Provost Carney commented. She hears frequently "nothing like that would ever happen to a faculty member." Dean McQuaid also reported that there are cases where the University does not even know faculty or students are in a place. ITRAAC is seeing a problem and the Committee is seeing restrictions on research.

What about the waiver, Professor Wells asked? It says that a person assumes certain risks, Professor Miksch said, but one does not waive negligence or the infliction of pain, for example. The waiver acknowledges that there are risks to travel, the person accepts them, and it also requires that people have health insurance and have thought about the risks.

Another possibility, Professor Miksch agreed, might be to suggest that ITRAAC include a couple of faculty members who are savvy and experienced in international travel; they could add value to ITRAAC.

Professor Flink asked if the Committee were ready to act on the proposed language change. Or is more refined language necessary, such as restricting the change to graduate students doing dissertation research? The Political Science department would probably argue that all graduate students should be included in the change. Dr. Carney pointed out that Humphrey School students may do field work research in dangerous places but they are not working on dissertations. Dr. Craig said that after thinking about it, he favored the language as proposed, not only because of examples such as Humphrey School students but also because if the adviser and the department chair have approved the travel, that should be enough. Professor Flink said one would hope that the adviser and chair would consider the student and decide whether he or she was ready for the proposed travel. He also suggested that if the policy were to require a plan, perhaps the adviser or chair could be identified as responsible for bringing it to ITRAAC, rather than the student, because it could still be a bar to research. And departments could review travel plans differently, Professor Larson observed; some might do it well and some might not. Professor Miksch said she would like to see a flow chart to differentiate what an undergraduate and a graduate student would be expected to do. There also needs to be a clearer and deeper statement of purpose, Professor Flink reiterated, as well as examination of the language of the policy emphasizing that it is intended to support opportunities.

Professor Bart said that there is a level of risk involved for the University. There could be two very similar students, one who has the characteristics and experience necessary for risky international travel and one who does not; the latter student, if denied a travel opportunity, might be able to charge the University with discrimination. Professor Flink said the policy cannot consider individual differences in level of maturity and ability to deal with risk.

Professor Flink said that he and Professor Miksch would prepare policy language changes.

### **3. Tenure Policy Section 12 Procedures (Programmatic Change)**

The Committee next took up a draft of proposed procedures to accompany section 12 of the tenure policy, which deals with programmatic change. With respect to the draft, the major question to be discussed is the reassignment of probationary faculty in the event of programmatic change. [Section 12 is appended to these minutes.]

The first thing to figure out is where any procedures document goes, Vice Provost Carney said. She suggested that it not be included with the other procedures document because the existing one deals with promotion and tenure procedures specifically.

Vice Provost Carney said the Committee needs to decide if it wants to make a distinction between tenured and probationary faculty. The other issues it needs to consider is procedures for when a department is dissolved and for when a faculty member wants to change departments because of a better fit. She said the Committee could use Provost Sullivan's 2007 letter, outlining how to deal with programmatic changes, as the basis for the procedures. Dr. Craig commented that people have changed departments; would the draft procedures cover them? Dr. Carney said that section 12 speaks to programmatic change; there is not necessarily a place in the tenure policy where procedures for changing

departments for a better fit could be included. Professor Miksch noted that the tenure policy does talk about changes in work over a faculty member's career; does the Committee not have the authority to speak to that provision? It is simply difficult to pinpoint where in the tenure policy these procedures might fit. Professor Miksch said they can arise from the language of the tenure policy and that an important issue, a better fit, should not be left out; that circumstance could affect more people than programmatic change (in part because there is no programmatic change planned right now).

Professor Wells demurred; she said she has only seen one instance of a faculty member changing departments in 30 years at the University and did not believe the procedures should include the case of individual transfer among departments. Each case is different and it will happen if both sides agree. Dr. Carney said that on that issue there could be an updated provost's memo. She said she only becomes involved when the request is to change college. The only thing the dean receives with a new faculty member is a bill for the salary and fringe benefit costs, so she or he needs to ask if there will be a revenue stream accompanying the faculty member so the college is not put at risk. It can be more or less complex to change departments within a college. (For example, someone teaching in a large department who is teaching large and medium-sized classes wants to move to a smaller department and teach smaller courses. The dean still has students who need instruction in the larger classes. Does the college hire a new faculty member?)

Professor Flink pointed out language in the proposed draft procedures for section 12 (NOTE THAT THIS LANGUAGE IS NOT EXISTING POLICY OR PROCEDURE ANYWHERE AT THE UNIVERSITY, IT IS DRAFT ONLY):

The faculty member from the unit undergoing dissolution must accept any reasonable assignment or offer of retraining. . . .

1. Re-assignments for Tenure Faculty

. . .

2. Re-assignments for Probationary Faculty Members

. . .

3. Resolution of Disputes Regarding Re-Assignment

Faculty members retained after dissolution of their units have the responsibility to accept reasonable reassignments or offers of retraining. Any dispute about the reasonableness of reassignment may be taken to the Judicial Committee, as provided in *Faculty Tenure* section 15. The faculty member shall perform the reassignment pending resolution of the dispute, unless the president on the recommendation of the chair of the Judicial Committee determines that provisional measures are appropriate. [THIS PARAGRAPH COMES DIRECTLY FROM THE TENURE POLICY.]

A. As specified in *Faculty Tenure* section 12.4, a 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.

Professor Flink suggested that in the first sentence to which he referred, the word "reasonable" should be highlighted. And if the faculty member does not believe the assignment or offer is reasonable, he or she goes to the options in section 3(A).

Professor Kimberley asked a conceptual question: What is the best support for a probationary faculty member? It feels wrong to offer extensive retraining, she said; her advice to a probationary faculty member in that position would be to find another job rather than accept retraining. Dr. Carney added that under the tenure policy, probationary faculty are protected almost like tenured faculty, who are offered retraining—so it is offered to probationary faculty members as well. Section 12 also offers time for the probationary (and tenured) faculty members to find other positions.

There could be a partner involved and a reluctance to move, Professor Larson said, so someone might be willing to accept retraining, even if for a P&A rather than faculty position so he or she could remain at the institution.

Professor Flink said, apropos of Professor Kimberley's question, perhaps the best course of action would be to refer probationary faculty members immediately to the section 3(A) options. Professor Kimberley said that it seems like retraining is the first choice offered; what if the person is no good at what he or she retrained in? Is the University stuck with the person? Professor Miksch recalled that she came up for tenure during the Wave One changes and it helped to know that she would be treated the same as the tenured faculty and would not lose her job because her unit was closing. Professor Kimberley agreed with Professor Flink: It would be better to tell probationary faculty members "here are your choices, you pick." Professor Miksch concurred and said that there is a difference between what a probationary faculty member in their first six months of service needs versus someone in his or her fifth year of probation.

Dr. Carney asked if the University should make that offer because others might say that it is treating probationary faculty members in a unit that closes more kindly than probationary faculty members in a unit that stays open.

Professor Flink maintained the offer should be available for all faculty. "If you want to stay, here's what you must do." It may need to be made clear what "reasonable" means. The University could decide what a reasonable buffet of choices would be but a person facing a department closure might have a different standard.

Dr. Carney pointed out that section 12 was not written to cover Wave One cases, it was for something like Waseca, where the campus was closed. In the Wave One changes, the General College faculty members were moved to Education and Human Development, and the College of Human Ecology was closed but its departments were moved as a whole to other colleges. Perhaps there is need for language about different kinds of programmatic change because section 12 is about dissolution. Some of the CIC policies were clear about the different kinds of changes they were addressing, Professor Miksch added. Recognizing different kinds of change could mean that section 12 would need to be amended, Dr. Carney observed.

The theme in the discussion is that a road map is needed so that a faculty member who faces programmatic change or believes he or she is in the wrong department knows what to do. Getting people directly to the section 3(A) options could save a lot of money. Dr. Carney said she agreed with Professor Kimberley: Many faculty members would not want to go through retraining. And they have not achieved tenure yet, Professor Kimberley added—they are close but they are not equal.

Vice Provost Carney said that the draft procedures that she and Professor Chomsky developed were adhering to section 12. Either section 12 needs to be changed or there needs to be agreement that procedures can be drafted that deal with the different situations that may arise. Professor Kimberley agreed to work with Dr. Carney on revising the procedures to reflect the discussion at this meeting; they agreed they would bring the revision to the Committee in December.

Professor Flink adjourned the meeting at 12:00.

-- Gary Engstrand

University of Minnesota

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## **Section 12. Programmatic Change.**

**12.1 Programmatic Change.** 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.

**12.2 Faculty Rights And Duties.** 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.

**12.3 Reassignments.** In cases of programmatic change, an officer designated by the president will make the reassignment or offer of training. The officer will consult with the faculty member and the receiving unit and will seek a mutually satisfactory assignment. If agreement cannot be reached, the University officer will assign new responsibilities after consultation with the individual.

The University may give the faculty member other assignments only if assignments to teaching in the faculty member's discipline are not feasible. For example, faculty might be assigned

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

A faculty member must accept any reasonable reassignment or offer of retraining. Following the assignment, any dispute about the reasonableness of reassignment may be taken to the Judicial Committee, as provided in section 15. The faculty member shall perform the reassignment pending resolution of the dispute, unless the president on the recommendation of the chair of the Judicial Committee determines that provisional measures are appropriate.

**12.4 Termination Of Appointment.** A faculty member who chooses not to accept a reasonable reassignment or retraining opportunity shall receive:

- (a) Assistance in locating other employment;
- (b) A minimum of one full academic year's notice or one year's salary as severance pay in lieu of notice, unless the appointment would otherwise expire earlier.
- (c) 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 select another severance program for which the faculty member is otherwise eligible at the time the appointment is terminated.