

Minutes*

Academic Freedom and Tenure Committee
Friday, April 27, 2007
9:30 – 11:00
12 Morrill Hall

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

Absent: William Doherty, Joseph Gaugler

Guests: Tracy Smith (Office of the General Counsel)

[In these minutes: (1) tenure code changes vis-à-vis current and incoming faculty; (2) course control issues; (3) Procedures for Reviewing the Performance of Tenure-Track Probationary Faculty; (4) participation in promotion and tenure meetings]

1. Tenure Code Changes and Current & Incoming Faculty

Professor Clayton convened the meeting at 9:30 and welcomed Tracy Smith from the General Counsel's office to discuss how the tenure-code changes affect current and recruited faculty (mostly probationary faculty, but the changes also affect associate professors current and incoming).

Vice Provost Carney distributed copies of a letter being sent by the Provost to Twin Cities deans and department chairs/heads. In the letter the Provost identified four different groups of faculty who are affected by the tenure-code changes. The four groups are as follows.

1. *Current probationary faculty (either at the assistant or, more rarely, at the associate level.)* As per Interpretation 6 above, they get to choose which 7.12 statement on which to be judged. In addition, since the old 7.11 paragraph is typically part of every earlier 7.12 departmental statement, they will be judged with that University tenure-standard as well.

2. *Current tenured associate professors.* Once again, as per Interpretation 6 above, they get to choose which 7.12 statement they will be judged by for promotion. There is no section of the current *Faculty Tenure Code* that addresses promotion to the rank of professor. In the current document, *Procedures for Reviewing the Performance of Tenure-Track probationary Faculty*, there is one sentence in Section 28 that states: "Promotion to the rank of professor requires, in addition, a national or international scholarly reputation in the individual's field of study." The words "in addition" refer to the previous sentence: "Promotion to the rank of associate professor is based upon professional distinction in research and demonstrated effectiveness in teaching and advising students, and, where relevant, in discipline-related service."

* 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.

3. *Current untenured assistant professors regarding their eventual promotion to the rank of professor.* Regardless of their choice of the old or new 7.12 Statement that is in place now for their promotion to the rank of associate professor and/or the conferral of indefinite tenure, they will be bound by the new section 9.2 for their promotion to the rank of professor. The exception is, if representations during hiring or negotiations were made regarding an election of promotion standards to the rank of professor, followed by reliance on those standards, then these faculty also will have the choice between the old 7.12 statement and the new 7.12 statement.

4. *Newly hired faculty at either the rank of assistant or associate professor.* All incoming faculty will be evaluated with the new version of the Faculty Tenure Code, specifically the new sections 7.11 and 9.2, for the purposes of tenure and promotion. Departments will not have their 7.12 statements finalized and effective until early fall 2007, however. Consequently, chairs/heads should send each new faculty member a copy of the current 7.12 statement and a copy of the draft of the new proposed 7.12 statement. For this group, there should be a written agreement between each chair or head and each new faculty member regarding the 7.12 statement under which he or she would be evaluated. A copy of this letter and agreement is attached.

For those in category #3, Professor Mowitt asked how explicit must the letter or representations have been about election of promotion standards. They will look at each case individually, Dr. Carney said; few letters are that specific, but if a faculty member was given a promise, the University will honor it.

In the case of #4, the 7.12 statements will probably not be completed until October, Dr. Carney said, but the new tenure-code provisions will presumably be adopted by the Regents in June, effective July 1, so the tenure-code changes will cover incoming faculty. But if the old 7.12 statement had the old 7.11 language, there are two categories of faculty: (1) those governed by the new 7.11 and the old 7.12, and (2) those governed by the new 7.11 and the new 7.12.

There will be a more extensive document for faculty members, Dr. Carney said, and there will be a longer-term rollout. There will also be a Memorandum of Agreement (MOA) with each faculty member (who is in one of the four categories) identifying which tenure-code provision or department 7.12 statement the individual has chosen. There will also be assurance that every faculty member understands the choices.

Professor Farr said this sounded good; he surmised that a faculty member could change his or her selection from the old tenure code/department 7.12 statement to the new. Dr. Carney said that that was correct but that the choice could not go in the other direction: if a faculty member chooses to be governed by the new language, he or she cannot later change and be governed by the old language.

She asked Ms. Smith to review the letter (which she had) and was now asking for Committee review.

A copy of the MOA will be in personnel files, Professor Anderson observed. Dr. Carney confirmed the statement; there will be hard copy in each department and a scanned pdf version on a secure server. The agreement will be part of each annual review, and she may prepare a new memo to departments on what should be included in annual reviews, given all the changes that have occurred and the variations that are possible.

Will the MOA talk about the Procedures, Professor Miksch asked? If a faculty member is governed by the old 7.12, will there be clarification about the Procedures? That is a dilemma because the Procedures are not completed yet, Dr. Carney said. According to the tenure code, changes in the Procedures must go to the Faculty Senate for discussion. (She noted that the language does not call for the Faculty Senate to vote on them, so the revised Procedures could be sent to Faculty Senators by email.) Professor Simon said he did not believe incoming faculty would have relied on the Procedures document and that there are not substantive changes in them. Dr. Carney said she has gone through them and believes the Committee did a remarkable job in clarifying them or adding items that were not covered before. The changes were not big ones.

Ms. Smith said there is no LEGAL problem with respect to the tenure code or the Procedures. The tenure code provides that it can be amended, so the tenure code changes could be applied to everyone. The University chooses not to do so, but instead to give people a choice, and even more generously it is giving a choice to new faculty. The University is going beyond what is legally required. With respect to the Procedures, there is no obligation to apply the old ones; the University changes procedures and policies all the time. It would be very confusing to have different policies apply to different people. She said she would not recommend having different versions of the Procedures apply to different groups because having multiple procedures creates too many opportunities for procedural error in promotion and tenure decisions.

Professor Farr made the point that there is confusion about the titles of the policies; in one place the tenure code is referred to as "Regulations (Concerning Faculty Tenure)," in other places as "Faculty Tenure," and informally as the "tenure code." New faculty find this confusing. Dr. Carney said she encountered the same problem at the orientation for new faculty and agreed there is a need for consistency. New faculty were relieved to know they had a choice, and the option will be made clear to all.

What about faculty in their last probationary? year, Professor Abul-Hajj asked? The new 7.12 statements have not yet been approved, Dr. Carney said, so they clearly will be governed by the existing statements. Has the Provost's office approved any 7.12 statements, he asked? They have, Dr. Carney said, but all of them need at least small changes so that they use the same language, but there are no changes related to the disciplinary understandings. This is, she said, a unique opportunity to bring uniformity to the statements.

So, Professor Mowitt summarized, the new Procedures will apply to everyone, and either old or new 7.12 statements will apply according to the situation. Is there any point at which the new Procedures and old Section 7.11 are at variance? Dr. Carney said she did not believe so. The Procedures are mostly aligned with Sections 7.3 to 7.6, and those provisions have not changed, so she said she believed the Procedures were not likely to conflict with the new 7.11.

Professor Clayton thanked Ms. Smith for joining the meeting.

2. Course Control Issues

The Committee turned next to a communication from a faculty member raising questions about (1) surrendering copyright to the University on course materials, and (2) the authority of a faculty

member over course content vis-à-vis the authority of a "course coordinator" to add material to a course without the consent or knowledge of the faculty member who developed the course.

Dr. Carney reported that the University has recently completed a new copyright policy, developed by a group co-chaired by Professor Laura Gurak and University Librarian Wendy Lougee. She suggested it would be useful for the Committee to meet with Professor Gurak to discuss the draft policy and the issues raised in the message to Professor Clayton.

When the Committee discussed this issue at its last meeting, use of a technical-support person to assist in presenting on-line materials seemed reasonable. The situation depicted now, however, appears to infringe on faculty rights, Professor Abul-Hajj said. Dr. Carney said that there could be a serious issue or it may be a misunderstanding.

There was agreement that any faculty member has the right to bring issues to this Committee and that it would review the draft copyright policy at its next meeting. As the facts are presented, however, Professor Mowitt said, this is not an issue of intellectual property/copyright, it is a violation of academic freedom.

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

The Committee turned back to the Procedures document. Vice Provost Carney provided new language for the section on central review of promotion-and-tenure files once they have been forwarded from the dean. Her recommended language, as edited by the Committee, read as follows:

"The senior vice president for academic affairs and provost has the final delegation of authority to make recommendations regarding tenure and promotion to the Board of Regents for all Twin Cities colleges and coordinate campuses (with the exception of the Duluth campus). (1) He or she receives recommendations from the deans who report directly to him or her. (2) Chancellors of coordinate campuses forward their recommendations both to the senior vice president for academic affairs and provost and to the senior vice president for system academic administration. (3) In the Academic Health Center, after receiving the recommendation of the dean, the senior vice president for the health sciences forwards his or her recommendation to the senior vice president for academic affairs and provost. Senior vice presidents and chancellors may consult with other persons before making a decision, but each such consultation or review shall be recorded in the candidate's file."

She receives questions all the time about how files flow, Dr. Carney said, and this language is intended to spell it out. The last sentence of the draft makes it clear that any senior vice president or chancellor may consult with others—but that such consultation must be recorded in the dossier. One way the problem arises is when someone makes a comment about a candidate in the course of an unrelated conversation; the vice president or chancellor needs to make a note and notify the candidate. Other odd things come up; she has a file in her office and the candidate wants to add something, or another outside letter has come in. In all cases the candidate is notified. The language she has proposed says that anything can be added to the file and should be shared with the candidate, Professor Mowitt pointed out. Professor Farr said this is an important issue; it should be made very clear elsewhere in the Procedures that ALL consultations must be in the file. If the candidate does not know about something in the file, the Judicial Committee hears about it.

Is it correct to say that the Provost makes the final decision, Professor Mowitt asked. It is not, Dr. Carney said; the Provost is delegated authority by the Board of Regents to make the final recommendation to the Board. (That authority does not appear in the tenure code, it appears in the Board policies related to delegation of authority.) There are misunderstandings that arise as a result of the current language of the code. The Provost writes a letter to the candidate informing him or her that he (the Provost) is recommending the candidate for promotion and tenure. The candidate will hear later from the Board of Regents whether the recommendation was accepted.

If the Provost recommends AGAINST promotion and tenure, is there opportunity for the candidate to respond, Professor Miksch asked? The letter explicitly refers the candidate to the Senate Judicial Committee and includes Professor Farr's name, Dr. Carney said.

Professor Anderson commented that the original language Dr. Carney proposed did not make it clear where the coordinate-campus chancellors stand in the process. At present there is no mention of the chancellors in the Procedures, Dr. Carney said; the Committee suggested edits (reflected above) that made it more clear how the chancellors fit in.

Professor Mowitt said there should be a final statement indicating that action on the recommendation is by the Board of Regents. Dr. Carney said she would draft one.

Dr. Carney said she would draft a procedure that would cover promotion from associate professor to professor; it will parallel this Procedures document.

4. Participation in Promotion and Tenure Meetings

The Committee agreed it would revisit the question of who may be present for promotion and tenure meetings and votes.

Professor Clayton adjourned the meeting at 10:59.

-- Gary Engstrand