

Minutes*

Faculty Consultative Committee
Thursday, January 21, 2010
1:00 – 3:00
238A Morrill Hall

Present: Marti Hope Gonzales (chair), Nancy Carpenter, Carol Chomsky, Chris Cramer, Shawn Curley, Kathryn Hanna, Brian Isetts, Walt Jacobs, Russell Luepker, Jan McCulloch, Kate VandenBosch, Cathrine Wambach, Becky Yust

Absent: Melissa Anderson, Janet Fitzakerley, Caroline Hayes, Emily Hoover, Jeff Kahn, Michael Oakes, Martin Sampson

Guests: Vice President Kathryn Brown

Other: Kathryn Stuckert (Office of the President)

[In these minutes: (1) proposed changes, Regents policy on conflict of interest; (2) election of 2010-11 FCC chair; (3) committee chairs; (4) salary memo recommendation from the Committee on Faculty Affairs; (5) statement from the Academic Freedom and Tenure Committee; (6) resolution from the Coalition on Intercollegiate Athletics; (7) changes to Regents policies; (8) guidelines for governance review of new policies or policy changes; (9) Big Ten Conference expansion; (10) Faculty Senate docket]

1. Proposed Changes to the Regents Policy on Conflict of Interest

Professor Gonzales convened the meeting at 1:05 and welcomed Vice President Brown and Ms. Zentner to discuss the draft revision of the Board of Regents policy "Individual Conflicts of Interest." [It should be noted that the draft revisions were also brought to the Senate Research Committee and the Senate Committee on Faculty Affairs and that as a result of the discussion recorded in these and other minutes, the policy underwent revisions. These minutes do not contain the exact language of the policy draft at the time it was presented, but the proposed policy being presented to the Board of Regents in February can be found at <http://www1.umn.edu/regents/docket/2010/february/index.html>]

Vice President Brown explained that when they started the Conflict of Interest (COI) policy work, they began with the administrative policy. The discussion of that draft has been enormously valuable. They decided to use what they had learned from it to revise the Board of Regents policy, in order to get that "anchor" set, and then return to the revisions of the administrative (implementing) policy. The difficult challenge will be the administrative policy. Today she is bringing the draft Regents policy, which the administration hopes to bring to the Board in February.

If one compares the draft Board policy with the existing Board policy, one finds they are not significantly different, Ms. Brown told the Committee. She highlighted several provisions of the draft policy for Committee discussion.

* 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.

They propose a "guiding principle" that encourages employees to engage in relationships with business entities to further the University's mission and that recognizes that there is the potential that professional judgment could be influenced by the existence of the relationship and result in personal gain. The principle declares that the integrity of the University's teaching, research, and outreach and public engagement activities is paramount and that the University must ensure that relationships between its employees and business entities are transparent, grounded in objectivity, and do not introduce bias into professional judgments or University job performance.

Vice President Brown then reviewed the language of the Definitions, Section III. For example, covered individuals is defined as faculty and staff; those who are responsible for the design, performance, or reporting of University research; and others authorized to act on behalf of the University to fulfill its missions. The definition has been expanded to include everyone—no one should be exempt from the University's ethical standards—but later in the policy, it allows the administrative policy to treat different groups of covered individuals in slightly different ways (for example, it may be that adjunct faculty would not have to engage in the same level of financial reporting as that of University employees). But no one would be exempt from the ethical requirements, she emphasized.

An individual COI is defined as the relationship between a covered individual's private business or financial interests (or those of the covered individual's immediate family members) and the person's obligations to the University such that an independent observer might reasonably question whether the individual's actions or decisions are determined or influenced by considerations of personal gain, which would compromise the objectivity with which the person performs his or her University responsibilities. At the heart of the matter is the question of personal gain, Ms. Brown observed.

Immediate family members are defined to mean the individual's spouse/domestic partner and children as well as any other family member who the person knows may benefit from his or her relationship to the University. This is expanded to include "and any other family member. . . ." and intended to catch the obvious, Vice President Brown said.

The next section of the draft, IV, Administrative Oversight, is in line with the current practices and addresses internal reporting, disclosure, and compliance matters.

The last section of the revised policy, Implementation, is broader than the current policy and itemizes what the administrative policy should address, Ms. Brown explained. It reassures the Board of Regents that their fiduciary responsibilities will be met and charges the president to establish administrative policies and procedures to implement the Board policy. Provisions in administrative policy would include, for example, defining and differentiating responsibilities for covered individuals as well as prohibiting activities that cause or may cause reasonable doubt concerning the integrity of University relationships with business entities.

The changes are intended to clarify and expand on the current policy, Vice President Brown explained, not change it dramatically. The administrative policy, to follow, will address the items set out in the Implementation section of the revised Regents policy. The administrative policy will be longer and will likely look different from the version that was circulated earlier for comment. And some of what was in the earlier draft administrative policy, Ms. Zentner added, may be shifted to an administrative procedures document.

Professor Chomsky inquired where else the draft Regents policy would be brought for consultation, given the significant level of interest in the topic and the number of people who would have been affected by the proposed administrative policy. Ms. Brown said she hoped that it would be written in such a way that the issues raised in the discussions of the draft administrative policy would be resolved, but they have a list of groups of individuals who will be consulted, including the Senate Research Committee and Senate Committee on Faculty Affairs, for example.

In response to a query from Professor Hanna, Vice President Brown affirmed that there is currently a Regents COI policy. The revision is designed to be consistent with the intent of that policy as well as clarify it and fill in gaps. It has not been reviewed for a number of years.

What about potential COI for University units, Professor Luepker asked? Can athletics test swimming suits made by a particular manufacturer? They have spoken with athletics about the potential conflicts of interest that could arise because of contracts with companies that make athletic apparel or equipment; a conflict could arise if someone in the department received special benefits in return for using apparel of a particular company. They have also talked with Vice President O'Brien about potential conflicts that could arise in other areas, such as purchasing.

Professor Curley raised a question that had arisen with respect to the draft administrative policy: This focuses on external entities influencing people at the University. One can envision the reverse; is that covered? There is a different policy that talks about misappropriation of the University's resources or name, Vice President Brown said.

What concerns her, Professor Chomsky said, is how this will play out in the administrative policy. It could govern individuals differently and could set different limits on what must be reported. This policy mandates reporting ANY external relationship. It would be wise for the administrative policy not to require disclosure of every single thing. Ms. Brown said the policy does not require disclosure of gifts but it does require disclosure of financial or business interests with outside entities. Which will be defined by the administrative policy, Professor Curley asked?

Professor Chomsky referred to language about reporting that requires people to report any external business or financial relationships, and the income earned from those relationships, that relate to their University-related expertise and responsibilities. "Any," she asked? Or those which are required by administrative policy? Lunch with a publisher? That is not a reporting issue, Ms. Brown said, and said the language in the final section of Implementation would deal with the limits and requirements for reporting.

Did they consider a cut point on the gift side, Professor Luepker asked? A pen versus a Mercedes? That could be in the administrative policy, Vice President Brown said, and it can have addenda (that are more restrictive) that address unique situations (such as pads and pens in the Medical School versus in other units). Units can be more restrictive than Regents' or administrative policy, she said, and she acknowledged that the devil will be in the details. There are difficult problems to be addressed. The administrative policy will provide over-arching principles along with more specific provisions. They are still wrestling with the best way to deal with those provisions.

Professor Luepker concluded that there will be local autonomy for some units to set limits. The Medical School can prohibit pens and pads. May another unit set a Mercedes as the threshold? Vice President Brown said she wanted to emphasize that the Regents will set an ethical standard and the administrative policy will amplify on it; units can then modify it at the local level—but they cannot modify the ethical standard. The administrative policy could set a threshold for gifts and the local unit could make it more stringent, but not less.

Who approves the local standards, Professor Yust asked? Ms. Brown said it would most likely be the dean, although a department might be able to set its own standards as well. The dean may not learn of the standards, Professor Yust observed. That is why they are talking about a process parallel to the 7.11/7.12 statements required by the tenure code, Ms. Brown said: There could be central review of the "7.12" COI statements to be sure they do not violate standards.

Professor Gonzales thanked Vice President Brown for bringing the draft to the Committee.

2. Election of FCC Chair 2010-2011

The Committee elected Professor VandenBosch as chair for 2010-2011.

3. Committee Chairs

Professor Gonzales thanked Professors Anderson and Luepker for agreeing to be nominated for chair of their respective committees for another year, and thanked those who had agreed to be nominated as new chairs of the other committees represented on this one. She also thanked Professors Elliott and Miksch for agreeing to be nominated for another year of service as co-chairs of the Academic Freedom and Tenure committee.

4. Salary Memo Recommendation from the Committee on Faculty Affairs

Professor Hanna next drew the attention of Committee members to the recommendations of the Subcommittee on Principles and Strategies for Salary Adjustments for Faculty. Every year, around February, there is an annual academic salary memo for non-bargaining unit faculty, and there is always a clause requiring that increases be based on merit. The Committee on Faculty Affairs established a subcommittee to consider other factors—in a year of salary freezes, with enrollment and research-funding increases, the faculty are pulling their own weight. The subcommittee recommends changing the language to allow units to allocation of the portion of the increase in an across-the-board fashion. There is precedent in the University: The contract with the faculty bargaining unit at Crookston and Duluth, approved by the University, includes across-the-board allocations. She said she was bringing the recommendation to this Committee on behalf of the Committee on Faculty Affairs which has unanimously endorsed the Subcommittee recommendation to see if it should be moved forward to the administration.

Professor Curley asked what the current language of the salary memo is. Professor Hanna responded that it requires increases to be based on merit and that across-the-board salary plans are unacceptable.

This recommendation would allow for flexibility and deviation from merit, Professor Gonzales asked? It would, Professor Hanna said, between units; they could include across-the-board elements in the salary plan. Would it allow the ENTIRE salary plan to be across-the-board, if the amount of the increase were small, Professor Jacobs asked? They did not discuss that possibility, Professor Hanna replied; any salary plan would have to be developed in consultation with the faculty according to the Faculty Compensation Policy.

Professor Cramer said the assignment of merit is subjective; a dean could say that all are equally meritorious. Who is going to question the dean's judgment?

The idea that the memo would say "never mind" about merit could be a problem, Professor Chomsky suggested. The problem now is the BAN on including any across-the-board element in the salary plan. It would be hard to argue that everyone is equally meritorious but merit does not necessarily have to mean INDIVIDUAL judgments of merit. Professor Hanna agreed and noted that much of the discussion in the subcommittee report is about the merit of the UNIT. She also noted that this proposal is only for the next fiscal year, not in perpetuity.

Professor VandenBosch commented that the report sounds more like advocacy for across-the-board increases rather than allowing it as a possibility, at the discretion of the unit. Professor Hanna said there was strong support for the recommendation from the Committee on Faculty Affairs, and it is a significant shift; Vice President Carrier made it clear that the administration prefers a merit-only salary plan.

It has been unfortunate that in years the University cannot give raises, people must decide whether to be productive or to wait for a year when salary increases will be delivered, Professor Wambach said. This proposal could have a negative unforeseen effect on how people shape their work. The circumstances are already affecting junior faculty, some of whom are doing a lot of work and who would receive big raises in a normal year—but who will not receive an increase this year. This proposal dilutes what little merit money is available.

Professor Luepker said he was unenthusiastic about the proposal. As a former chair, he conducted 50 faculty evaluations every year on a one-to-one basis—he took the job seriously. He learned that there are people who do a lot quietly and people who do little noisily. They never had a lot of money but this proposal would take away the discretion with what little they have. The evaluations took two months of his life; this proposal would reduce that demand.

Professor Yust said that as a chair she is frustrated by differentiating between .1% and .3% increases. When a salary plan is entirely merit, one must claim that half the faculty are below average, which creates a morale issue. She also noted that her department's 7.12 statement does not base merit on a single year but rather a rolling three-year average, an approach that other units have also taken. Finally, junior faculty members are often hired at higher salary levels than some current faculty, which is a big problem. She said that it would be nice to have a little money that can be distributed across the board because it would be a morale booster.

Professor McCulloch said it was her understanding that there has been no firm decision about the 2% salary increases for next year, but it may be a done deal. However, with the 27-pay-period problem,

the possibility of furloughs, and concern about losing staff, one can ask where the resources for increases will come.

Professor Cramer again questioned the need for the language; if a dean or department head can and wishes to deliver across-the-board increases, he or she will do so. Professor Hanna commented that a dean who did that would likely have his or her hands slapped. A dean could say that everyone receives X% and some might receive more, Professor Cramer pointed out, and that addresses the problem. It is inescapable that half the faculty are below average, he added.

Professor Curley said the argument for more flexibility does not seem to hold. The intent of the proposal as noted in its rationale is not to have flat increases across the board with nothing for merit, rather the intent is to allow partial across-the-board raises. However, this essentially serves only to reduce the variability in salary increases within a unit. However, the current system already allows a unit to have more or less variability across individuals, as appropriate; and so, the current system seems to have more flexibility than the proposal. Also, his unit has a three-year rolling average but that does not completely eliminate the effects of a flat year. One still only receives increases in two of the three years; and, since increases typically are made in percentage terms, effects in 1 year are compounded in later years.

Professor Gonzales summarized by saying that the Committee appeared to give the recommendation a rather tepid response. It was agreed to table the recommendation until the next meeting.

5. Statement from the Academic Freedom and Tenure Committee

At this point Professor Elliott, co-chair of the Academic Freedom and Tenure Committee, was connected to the meeting by telephone.

Professor Elliott commented that all are well aware of the adventure in the late fall with the publication and media response to work taking place in the College of Education and Human Development (CEHD) on a grant proposal to the Bush Foundation to change the way CEHD prepares teachers. The process, as it unfolded, was this: There were two parts to the grant, planning funds and then grant support; if the proposals passed muster, there would be an award. There was a lot of money involved. CEHD appointed a number of task forces to develop proposals and had an internal website for notes and brainstorming. The Academic Freedom and Tenure Committee was told that someone released the notes to the press, which created the firestorm.

As a result of the controversy, the President received a letter from the Foundation for Individual Rights in Education (FIRE) demanding a response, with the presumption that changes in the direction of the task force notes would undermine American meritocracy and student academic freedom.

Academic Freedom and Tenure talked about this matter over two meetings, and heard from Dean Quam, General Counsel Mark Rotenberg, and Professor Heidi Kitrosser from the Law School, an expert on academic freedom. They then worked on a statement about academic freedom and unanimously approved it. She now brings it to this Committee for support. The statement read as follows:

The Senate Committee on Academic Freedom and Tenure (AF&T) has taken note of recent events involving the Foundation for Individual Rights in Education (FIRE) response to College of

Education and Human Development's (CEHD) faculty members' work in developing a proposal for the Bush Foundation to redesign the teacher-education curriculum.

The Committee takes no position on the merits of the ideas expressed in the task force notes that have been the focus of the events, but it vigorously reaffirms the right of faculty and staff to speak freely on matters related to their professional responsibilities and to the governance of the University. Academic freedom protects faculty and staff who express their best professional views; it is the essence of the creative process.

Professor Cramer said it is difficult to disagree with the sentiments in the statement. The Supreme Court has made a couple of decisions that limit free speech of faculty and faculty members have been fired because of statements they have made. It is important to make the distinction between speaking publicly and speaking internally. Professor Chomsky said that Professor Cramer was talking academic freedom and the First Amendment; because of the court decisions, the Board of Regents, on recommendation of the Faculty Senate, redefined academic freedom at the University of Minnesota to provide more protection. Internal versus external should not matter. The idea is that academic freedom as recognized at the University of Minnesota covers this kind of work. That is why the statement and the University's policy do not talk about the First Amendment—because the University cannot control what it means. But it can define academic freedom.

Professor Yust inquired if the President has responded to the FIRE letter. Professor Elliott said that the General Counsel has responded.

The Committee discussed with Professor Elliott whether the statement should be brought to the Faculty Senate, and if so, for information or action. Professor Carpenter urged bringing to the Faculty Senate for endorsement because the issues are important. Professor Chomsky suggested bringing it for information; someone could always move to endorse it. The statement could lead to a long discussion of the court cases and what happened in CEHD, because not everyone followed the events. Professor Wambach observed that the controversy had died down and bringing the statement to the Faculty Senate could revive the ruckus; it might be better to let sleeping dogs lie. Professor Elliott expressed doubt that it would stay asleep because others are keeping their eyes on what CEHD does. Professor Yust said she understood that bringing it to the Faculty Senate could revive attention to the issue, but academic freedom is a significant foundation of the University and it is important that something be said, if only to reassure the Bush Foundation. She urged that this Committee endorse the statement and that it be brought to the Faculty Senate for information. The Committee concurred.

6. Resolution from the Coalition on Intercollegiate Athletics

The Committee reviewed the resolution from the Coalition on Intercollegiate Athletics, the group of faculty representing faculty senates from institutions with "big time" college athletic programs, and concluded it would place the resolution on the docket of the Faculty Senate for information. (The resolution was sent to all COIA member institutions as a template that their faculty senates could adopt or receive and is appended to these minutes.)

7. Revisions to Board of Regents Policies

Professor Gonzales welcomed Assistant Vice President Paulsen and Mr. Binks (both Office of the Provost) to report on changes to three Regents policies.

Ms. Paulsen explained that the Board of Regents reviews all its policies regularly and systematically; it is a normal process. There are three policies ready for action by the Board and three more in the works.

-- Academic Misconduct: The only change is that language calling for review of administrative procedures will be deleted, in keeping with the philosophy of Board policies serving at the broadest level.

-- College Constitutions: The Board asked for a definition of college, which is not defined anywhere in Board policy. Professor Chomsky commented that it is difficult to do definitions; everyone knows what a college is but it is hard to define. Ms. Paulsen said that one element of the definition has been problematic: "regarded as the academic home for its faculty." Professor Wambach and others suggested using the phrase "budgetary home."

-- Student Financial Aid: The only proposed change is to delete language calling for the University to comply with federal, state, and University regulations. The University is required to comply with these provisions, Ms. Paulsen pointed out, so the language is redundant.

Professor Gonzales thanked Ms. Paulsen and Mr. Binks for bringing the changes to the Committee.

8. Guidelines for Governance Review of Administrative and Regental Policies and Policy Changes

Professor Gonzales noted minor changes proposed to the guidelines: Minor changes will be reviewed by the appropriate Senate committee, and if there is no objection, the change will be made without further ado. FAQs will be prepared by the administrative "owner" of a policy, if required, and will be reviewed for information by the appropriate Senate committee. In either case, if there is objection, the item will be brought for further discussion.

The Committee also reviewed flow charts indicating when and where policies or changes will be reviewed, one for educational policies and one for all others.

Professor Wambach commented that the flow chart for educational policies will be important for review of the graduate-education policies. The governance system will need to think about how to conduct this review, and the policies need to go on the University's policy-library website. It will be a big task, and at some point this Committee should discuss the policy and governance parts of the recommendations from the graduate-education task forces.

9. Big Ten Conference Expansion

The Committee agreed it would consider making a brief statement to the President about criteria to be used in deciding on any additional member of the Big Ten Conference.

10. Faculty Senate Docket

After reviewing the existing and potential items for the Faculty Senate docket for February 4, the Committee concluded there was insufficient business and cancelled the meeting.

Professor Gonzales adjourned the meeting at 3:00.

-- Gary Engstrand

University of Minnesota

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ACADEMICS FIRST

A Model Resolution on Intercollegiate Athletics for Faculty Senates

Jointly issued by:

The UC Berkeley Faculty Senate

The Coalition on Intercollegiate Athletics (COIA)

The Drake Group (TDG)

BACKGROUND

Intercollegiate athletics, while providing positive benefits to athletes, the campus and the broader community, at times clashes with the educational goals and mission of our institutions. These conflicts, which by many measures are on the increase, have the potential of undermining the values and aims of higher education. This resolution, which originally emerged from the UC Berkeley Faculty and was passed by the UC Berkeley Senate on 5 November 2009, offers a set of proposals that will enable college sports to be better integrated into the overall academic mission and remain a positive force on our campuses.

We recognize that each institution has its own unique atmosphere and relationship between academics and intercollegiate athletics. This wording of this resolution is meant to be a template, to be considered as is or in a modified form by individual Faculty Senate (or the equivalent campus governing body).

This resolution is divided into four parts: 1) Faculty Governance; 2) Academics; 3) Finances; and, 4) University Advancement.

1. Faculty Governance

(a) The Faculty recommends that the University recognizes and supports a Campus Athletics Board (CAB) or equivalent, as mandated by the NCAA. The CAB shall have a voting membership composed solely of faculty members and shall be authorized, in conjunction with the University Administration, to establish policy and to oversee the athletic department's operations with regard to the following:

- (i) Promote transparency and clarity in all matters affecting the academic mission;
- (ii) Assist the athletic department in making decisions that are in concert with the overall academic mission of the University;
- (iii) Protect student athlete welfare; and,
- (iv) Confirm the satisfactory accomplishment of the academic and financial items below.

2. Academic

- (a) The Faculty recommends that in order to maintain academics as the number one priority for all students, students who also participate in athletics maintain a cumulative G.P.A. of 2.0 in order to continue participating in intercollegiate athletics.
- (b) The Faculty recommends that the University establish a policy which ensures that athletic contests and athletic travel be scheduled to minimize lost class time, including final exam periods.
- (c) The Faculty recommends that all other athletically related activities (e.g., formal and informal practices, team meetings, and any activities at which the attendance of student-athletes is required) be scheduled outside the prime times for academic classes.

3. Finances

The faculty recommends that the University President or equivalent put the Athletics Department on a self-supporting basis, and implement the following:

- (i) The Athletics Budget shall receive no base funds from the general education fund. Any annual cash support to the Athletics Budget from the general education fund shall be approved by the Athletics Oversight Committee and the faculty senate, as well as by the University's governing board and through the normal budgeting procedure.
- (ii) The Athletic Budget shall be integrated with the academic budget and follow the same processes and procedures; and,
- (iii) The Athletics Budget shall receive support from student fees only as voted by the student body.

4. University Advancement

The University Administration and the Athletic Department shall continually urge donors to prioritize academics at the University campus.