

2021-22 UNIVERSITY OF MINNESOTA

Faculty Senate Minutes: No. 1

Thursday, September 23, 2021

1:00 - 1:45 p.m.

The first meeting of the Faculty Senate for 2021-22 was convened on September 23, 2021, online via Zoom, and was also live-streamed and recorded on [YouTube](#). At the time of this meeting, there were 164 voting members of the Faculty Senate. 127 were present.

Professor Carol Chomsky, Faculty Senate vice chair, called the meeting to order at 1:00 p.m.

1. Motion to Approve Special Rule (*Action by the Faculty Senate*)

Professor Ned Patterson, chair, Faculty Consultative Committee

The Faculty Consultative Committee proposes the following special rule during this meeting:

- Speakers are limited to two minutes each time they are recognized.

A $\frac{2}{3}$ majority of those present and voting is required to approve the special rule.

The clerk will interject when speakers have thirty seconds left and when time is up.

Motion: To approve the special rule.

Approved (75 in favor, 3 against).

2. Discussion of Proposal on Faculty Attestation Discipline Panel (*Discussion by the Faculty Senate*)

Professor Ned Patterson, chair, Faculty Consultative Committee

Executive Vice President and Provost Rachel Croson

Background

The provost is proposing creation of a special panel to review cases of faculty non-compliance with the attestation requirement, pursuant to Section 14 of Board of Regents Policy: *Faculty Tenure*. The [proposal](#) will be discussed at this meeting, with a vote held at the September 30th meeting of the Faculty Senate, pending approval of that agenda by the Faculty Consultative Committee.

Discussion

Executive Vice President and Provost Rachel Croson introduced the topic, noting that she had had numerous conversations with the Faculty Consultative Committee (FCC), FCC leadership, and leaders of various other governance groups. She then introduced Rebecca Ropers, vice provost for faculty and academic affairs, who presented the details of the proposal:

Context

- Vaccination is key to ensuring a safe learning environment.
- We want to make sure that everyone is either vaccinated or testing.
- As of September 22, 2021, 96.6% of the University's faculty (non-union) have attested. Employees were directed to attest by September 17.
- How should the University respond to those who do not attest?

Governing Policy

- Board of Regents Policy: *Faculty Tenure* governs disciplinary processes for faculty.
- Faculty members are required to attest.
- For faculty members who do not attest:
 - “The dean must first attempt to discuss and resolve the matter with the faculty member involved.”
 - “The dean must then submit the matter to the tenured faculty of the academic unit involved for their recommendation. If the senior vice president for academic affairs and provost and the Faculty Senate have expressly approved the submission of allegations of the violation of a specified policy to another body for preliminary recommendation, in place of submission to the tenured faculty of the academic unit, the dean must submit the matter to that body for its recommendation” (Section 14.1).
 - “Both the dean and the faculty member may submit their views, in person or in writing, to the body making the recommendation, but neither of them may participate in the deliberation or vote. The body making the recommendation does so by secret ballot and makes a written report to the dean within 40 work days of submission of the issue to it, indicating the number of votes for and against the proposed action and the reasons articulated. A copy of the report shall be sent to the senior academic administrator and to the faculty member (14.1)”.
 - Once the dean receives the recommendation, they decide how to proceed within 40 work days and must give written notice to the faculty member, including action proposed, specific grounds for action, summary of evidence, and informing the faculty member of the right to appeal to the Senate Judicial Committee (SJC) within 30 days.

Proposed COVID Vaccine Attestation Advisory Committee (CVAAC)

- Establish COVID Vaccine Attestation Advisory Committees (CVAAC) to serve in place of an academic unit's tenured faculty when advising the dean on disciplinary action.
- Depending on the number of people who have not attested, establish standing groups of five faculty members each. Attempts will be made to balance representation from tenure-stream and contract faculty and from units across the University.
- Groups will be selected from a list provided by University Senate Office staff of former members of the SJC, former faculty panelists from the Office of Conflict Resolution, and contract faculty members with significant governance experience.

- To ensure that the process moves expeditiously, the groups will schedule set times during which deans and faculty members offer their perspectives.

Benefits

- The University is able to provide a more consistent response
- The University is able to move quickly within existing policy
- Faculty governance remains involved through an appeals process to the SJC
- Faculty in units do not have to take on additional work

Professor Ned Patterson, FCC chair, noted that consultation had taken place with the FCC and SJC, as well as leadership of the Senate Committee on Faculty Affairs (SCFA), Academic Freedom and Tenure Committee (AF&T), Equity, Access, and Diversity Committee (EAD), and the Disabilities Issues Committee.

Discussion

Faculty senators had the following questions pertaining to the proposal:

- This proposal attempts to streamline the current process; roughly how long is it anticipated to take? Ropers said that the alternative process would hopefully be much faster, noting that the 30-day window for appealing to the SJC, as well as the SJC process, cannot be condensed.
- What will happen if someone is stubbornly non-compliant, such as not wearing a mask, refusing to get tested, etc.? Provost Croson said that the proposed amended process would only be for simple failure to attest. For other issues, particularly those that put other people in danger, there are parts of the tenure policy that apply and that would be much more expeditious. She added that the Office of the General Counsel (OGC) had advised that behaviors such as refusing to mask or test would be grounds for using those parts of the tenure code, but simply not attesting would not necessarily constitute a risk to others and therefore would not be appropriate under those sections.
- What happens if people lie on the attestation? It seems like this policy will only affect people who refuse to attest, and who are likely taking a stand on principle. Croson said that they are starting from a position of trust, and that the administration does have the ability to spot check if there is suspicion of widespread fraud.
- Could this lead to dismissal of a tenured faculty member? Croson said in theory, yes, but the expectation is that progressive discipline take place and dismissal would only result after prolonged refusal to comply.
- This could be a lot of work for the SJC if a lot of cases go to appeal; is there any thought of supplementing the SJC? Ropers said that if a lot of people appeal, that would be something to consider.
- What procedures are proposed to ensure confidentiality? Ropers said that the same principles of confidentiality would apply as in any disciplinary case.
- Do you expect that the attestation requirement will result in higher rates of vaccination? Croson and Ropers said that they did not know, but it does communicate the expectations around vaccination and testing.
- How does this interface with OSHA and other federal requirements? Croson said that the OGC believes the attestation requirement meets OSHA and federal standards that apply.

- What do the disciplinary actions that might be taken against students look like? Croson responded that each constituent group has its own processes. The Office for Student Affairs is working on the student side, she said, while the Office of Human Resources (OHR) is working on a process for staff and unionized faculty.
- Does the current proposal specify consequences for people who attest but do not follow through with the testing protocol? Croson said that consequences had not yet been specified.

In addition, the following comments were made:

- The attestation does not require people to get vaccinated; it merely asks them to test regularly if they are not.
- People who refuse to attest should be required to test regularly.
- Inconsistent application of disciplinary action ends up in the SJC. The proposed process would cut down on inconsistency.
- The problem with all of the University's COVID policies is that there is no mechanism to monitor compliance.

Chomsky said that further discussion and a vote would take place at the September 30, 2021, Faculty Senate meeting.

3. Adjournment

Chomsky adjourned the meeting at 1:44 p.m.

Amber Bathke
University Senate Office