

Minutes\*

**Academic Freedom and Tenure Committee**  
**Friday, April 26, 2013**  
**10:00 – 12:00**  
**238A Morrill Hall**

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

Absent: Brian Horgan, Carol Wells, Barbara Elliott

Guests: Scott Petty, Nicole Scott, Ana Burger (graduate students); Associate Vice President Andrew Furco (Office of Public Engagement); Tracy Smith (Office of the General Counsel)

[In these minutes: (1) public engagement issues; (2) tenure policy section 12 procedures; (3) graduate student academic freedom appeals]

**1. Public Engagement Issues**

Professor Miksch convened the meeting at 10:00 and welcomed Associate Vice President Furco to discuss public-engagement issues raised by the Public Engagement Council (PEC) that are pertinent to the charge to this Committee.

Dr. Furco provided background on the PEC: It is charged to deal with persistent and knotty issues that keep coming up as the University increases the amount of public engagement work in which it is engaged as part of its land-grant mission. The PEC was created as a vetting body and advisory group in 2011 and works with other University groups on policy questions and seeks to give thoughtful review and consideration to issues as they arise. The issues that the PEC has identified as within the bailiwick of this Committee are as follows (between the \* \* \*):

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**Indirect Cost Rates and Community-Engaged Research**

a) Low/no ICR (Indirect Cost Recovery) Grants and Contracts

Proposal to establish a designated resource pool to underwrite unmet infrastructure costs for community-engaged grants that have low or no ICR.

b) Indirect Cost Limits and Academic Freedom

During the 2010-2011 academic year, three faculty members informed the Office for Public Engagement that their respective unit leaders discouraged them to pursue particular community-based grants because

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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.

the funding agency had a cap on the indirect cost rate that could be charged to the grant. A concern is that many of the funding agencies on which faculty who do community-engaged research rely have limits on allowable indirect costs. At a faculty gathering of community-engaged researchers, participants expressed concern that while they are under pressure to do research and publish, they have to compromise their research agendas because they are not being permitted to pursue the kinds of research studies they seek to do. In one case, the faculty member felt that this was an infringement on her academic freedom.

Questions to consider:

-- Given the indirect cost limits among community-based organizations that sponsor research, how does the University reconcile its promotion of community-engaged scholarship with its real need to maximize the indirect cost recovery on grants and contracts?

-- What recommendations or guidelines might be offered to faculty and departmental units as they pursue community-engaged or community-partnered research activities with organizations that have limits on the indirect cost rate?

-- What issues regarding academic freedom should be considered (if any) when faculty are discouraged from pursuing grants and contracts that limit the indirect cost rate?

### **Faculty Issues Regarding Community-Engaged Work**

The following issues have continued to be raised about faculty involvement in community-engaged research, teaching, and outreach:

a) "Reviewing" Community-Engaged Scholarship: Several faculty members from various disciplines who conduct community-engaged research and teaching have expressed concern that members of their department or college are unclear as to how to best review community-engaged scholarship. Although the current promotion and tenure guidelines state that "interdisciplinary work, public engagement, international activities and initiatives, attention to questions of diversity, technology transfer, and other special kinds of professional activity by the candidate should be considered when applicable" (Statement 7.11), some faculty who conduct community-engaged research and teaching feel they are disadvantaged because there is a lack of understanding or standards in their units regarding how "engaged" scholarly portfolios should be reviewed and assessed.

Questions to consider:

-- Should there be a set of University-wide guidelines that can assist faculty reviewers to assess the quality of community-engaged scholarship?

-- Should there be a review team trained in community-engaged scholarship that, upon request, can conduct supplemental reviews of faculty portfolios and offer to review committees an "external" assessment of the faculty members' scholarly work?

b) Reporting and Recognizing Community-Engaged Scholarship. Several faculty members have raised issues that in completing their faculty activity reports, "engagement" is listed as a separate section of the report (e.g., separate from the research and teaching sections). For faculty who conduct community-

engaged research or teaching, they feel they need to make a choice regarding the section in which they place their community-engaged scholarly work. In some cases, the department has required them to place their community-engaged work in the "engagement" or "outreach" section of the faculty activity report, even when that work has been rooted in scholarly research, resulted in publications, and garnered research grants. In other cases, faculty members who have done community-based "service" (e.g., offered expert testimony in a community-based setting) have argued that their service work should be considered scholarship and that they should get more credit in their promotion and merit reviews for this work.

Questions to consider:

- Should there be some guidelines to assist college and department leaders in how to best advise faculty on how to report community-engaged work in the faculty activity reports?
- Because not all community-engaged work is scholarly, should there be some guidelines in defining what counts as "scholarship" as it pertains to community-engaged activities?

Professor Larson asked how the arts fit into these questions. It seems that the idea of public engagement is to encourage more insular departments to get out, but in the arts that is part of what they do. Are they included in these questions? They are, Dr. Furco said, and mentioned an award winner in the College of Design, an arts-based winner of the president's community-engaged award. There are people from across the University.

Public engagement is near and dear to people in the arts, Professor Flink agreed, but said that sometimes University structures and processes are not well-adapted to the visual and performing arts. The Public Engagement Council (PEC) lacks a voice for those areas. One question is how they can get the arts more involved, because the arts are intrinsically involved in public engagement. Dr. Furco said he has met with the Department of Art and the School of Music, and others, and agrees that the arts are very involved in public engagement; he said he welcomed suggestions on how to get them more involved.

Professor Miksch recalled that when the tenure policy was revised recently, there was discussion about adding language about public engagement work in teaching, research, and service to section 7.11. A number of departments grappled with such language in writing their 7.12 statements. Perhaps there are some exemplar 7.12 statements that could be provided on the PEC website for other units to consider.

Academic freedom, Professor Miksch next said, brings to the Committee the indirect cost limit question and if faculty members are not allowed to do scholarship they may have been hired to do. When this Committee presented the question to former Vice President for Research Tim Mulcahy, he was sympathetic but noted that research costs the University 62 cents for every \$1.00 of research, so the institution loses money with each grant it receives because there are transactional costs to doing research. Dr. Carney said that some colleges balance research grants between those with full indirect-cost funding and those with little or none.

Professor Larson asked if indirect-cost funds are college "slush funds." Dr. Carney said they certainly are not; colleges use the money for many of their operating expenses. Professor Flink said this exchange highlights the structural challenge at the University: CLA, for example, has departments that have access to government research grants, but most of the arts and humanities do not, and the grants in the arts and humanities tend to carry little or no indirect-cost funding with them. He has received grants

that he does not process through the University—there is almost a shadow industry in the arts with respect to arts grants.

Dr. Furco said that with pressure on the colleges to become more financially secure, the faculty are encouraged to seek grants with higher indirect-cost rates. Is this an academic-freedom issue? Dr. Craig observed that the current financial structure of the University also discourages interdisciplinary work and colleges fight over dollars. Dr. Carney took issue with Dr. Craig; she said the interdisciplinary research problems have largely been addressed through the Office of the Vice President for Research, but there are still issues with respect to interdisciplinary teaching.

Professor Bart asked if it would be possible to cut processing costs for arts and humanities grants. Dr. Carney assured him that those costs are not the reason that research costs as much as it does.

Professor Miksch asked what Dr. Furco was seeking from the Committee: advice to the PEC? Dr. Furco said he wished to inform this Committee about the issues and ascertain if these are issues that should be discussed further—and if so, who should discuss them. Should his office gather more information to see how pervasive these problems are? He brought the issues to the Committee; it is up to it to tell him if they are important and should be explored further. In the case of low indirect costs, the feedback to the PEC has been that this issue has been discussed before and is important.

Professor Bart said there is a major difference between a faculty member participating in a community organization and a faculty member publishing an article in a peer-reviewed journal; the latter has a much greater impact and will likely be of higher quality. Dr. Carney observed that Professor Bart was not present for the discussion about academic freedom and the University's approach to publicly-engaged work; Dr. Furco noted that the discussion is about scholarly work, not participating in a community-based organization.

Professor Miksch suggested looking at exemplars of unit 7.12 statements, identifying how widespread the problem is, and thinking about the tension between academic freedom and financial pressures. Dr. Carney commented that promotion-and-tenure dossiers have had much excellent public-engagement scholarship and many exemplified publicly-engaged teaching and research; she said she has seen a significant change in that respect in the eight years she has been in her position as vice provost. There has been an impact from public-engagement work that Dr. Furco has spearheaded and supported by changes in the tenure policy.

Professor Kimberley said she has noticed more and more that federal grant proposals require public engagement. There is a balance in University public engagement between faculty who want to do public-engagement work, who pursue grants that carry little or no indirect costs, and the need to run the department. Any shortfall in indirect costs has to be covered from somewhere. This is not purely a matter of academic freedom; the mission is at risk if the institution can't support public-engagement work.

Professor Miksch suggested the Committee discuss the question of indirect costs and provide feedback to the PEC. Professor Bart said he would appreciate seeing data on the number of faculty members affected. Mr. Petty asked if this is about faculty members who receive grants with no indirect-cost funding or about faculty members who don't even think about seeking grants with no indirect-cost funds. Both, Dr. Furco said; in the latter case, the dean may not sign off on the grant proposal. So the

concern is about self-censorship, Mr. Petty said, which Dr. Craig said would be difficult to survey people about.

Professor Flink said that Dr. Furco had raised the question of whether public-engagement activity is recognized and rewarded. He said he believes the University's Twin Cities campus is a leader in doing so and that it is doing much that is right; he wondered if there is a way to approach it more comprehensively. That is where the PEC comes into play, Dr. Furco responded. He said he would be willing to talk about representation from this and other Senate committees in order to raise issues; he noted that the PEC does not make policy, it offers guidelines and said it would welcome help.

Professor Flink thanked Dr. Furco for joining the meeting and bringing the issues to the Committee's attention.

## **2. Tenure Policy Section 12 Procedures**

[Note: Section 12 of the tenure policy is appended to these minutes.]

Professor Miksch now welcomed Ms. Smith from the General Counsel's office to discuss the draft procedures the Committee has developed to accompany section 12 of the Regents' tenure policy (Section 12: Programmatic Change, <http://regents.umn.edu/sites/default/files/policies/FacultyTenure1.pdf>).

Ms. Smith said she appreciated the need to have procedures for some parts of the tenure policy but observed that it is already more prescriptive than most University policies and some procedures are already incorporated in the policy. It is important that any procedures align with the policy; the draft prepared by the Committee includes more procedures than the policy.

Second, Ms. Smith said, the kinds of change that section 12 addresses do not happen very often so the University has no deep well of experience; the procedures represent looking at them as first-time experiences. They analyze a number of questions for the first time, so she is not certain about what programmatic change is from the standpoint of the Board of Regents or the president, so working through the questions and trying to identify best practices is a good idea.

Third, the institution and the faculty are bound by the tenure policy and there are distinctions between tenured and tenure-track faculty and other faculty members, Ms. Smith noted. She said it is not clear that giving different rights to tenured and probationary faculty members is authorized by the tenure policy. Section 12 does not differentiate between them, and if doing so is a good idea, there is a way to change the policy.

Fourth, section 4 of the tenure policy is about changing a faculty appointment and the need for consent, Ms. Smith said. That language factors into how one thinks about programmatic change. She said the Committee does not want to give more rights to those who are less affected than others, so the policy treats them all the same. She said the Committee might want to look at programmatic change and structural change.

Vice Provost Carney said that she had reviewed the 2005 changes, including emails and discussions with the Office of the General Counsel. She has also reviewed all of the tenure policies since

1948. Section 12 came into the policy with the closing of the campus at Waseca. She took her position as vice provost in 2005, when many changes were taking place (e.g., General College faculty moved to Education and Human Development and the College of Human Ecology was closed, its departments moved to different colleges). The move of the General College and Human Ecology faculty was quite different from the closure at Waseca; in the latter case, the faculty went in a number of different directions. The issue will be around what consultation is, which does not mean everyone will agree.

When the 2005 changes were occurring, each vice provost was assigned to work with a college as well as a secondary assignment; she worked with the College of Human Ecology, Dr. Carney related. There were many issues that came up; there were massive changes in 2005-06; since then, there have been individual faculty members who are not happy with where they are. If those faculty members move within a college, such as between departments, that is a decanal decision. If the faculty members move across colleges, the question goes to the provost.

Ms. Smith said that paragraph A in the draft procedures captures the idea and it seems correct.

A. Scope: Programmatic change may include dissolution of an academic unit or program, or internal movement of a unit or program through merger or other structural change within the University. The provisions in Faculty Tenure section 12 establish standards and procedures governing such programmatic change, which are amplified in these procedures. In case of fiscal emergency, the provisions of section 11 apply.

Section B of the draft then calls out one particular kind of programmatic change, she said, but it is not clear what it is intended to do. Even the changes in B are treated as programmatic change under section 12.

B. Procedures in the Event of Structural Change: In the event that an academic unit as a whole moves to a different college or merges with another academic unit, all regular faculty members in the unit moved will have their appointment home changed in accordance with the modification but will otherwise retain their employment rights. A Memorandum of Understanding (MOU) will be executed between the University and each faculty member affected. The memorandum will specify the standards and expectations that will be used after the change to consider the faculty member for tenure (if applicable), promotion, and compensation. Affected regular faculty members may choose to be evaluated according to the departmental statement applicable in their original units under subsection 7.12 or may choose to be evaluated with the 7.12 statement from the new unit.

Professor Miksch said that one thing before the Committee is definitional: although the tenure policy is detailed, it does not define programmatic change, and the Committee wishes to provide more definition because the lived experiences of the changes can be different. Once it has been defined, then the Committee can turn to the question of to whom rights and responsibilities apply. She said she believes that section 12 does apply in the cases of both paragraphs A and B; the Wave One college changes were covered by section 12. A point that Professor Cathrine Wambach made in an email message to her was that the closure of General College was not seen by the administration as "dissolution of an academic unit" because it was changed into a department, but about one-third of the faculty did not move with the others because they did not fit in the College of Education and Human Development.

Vice Provost Carney pointed out that that was the choice of the individual faculty members; the central administration did not move them elsewhere.

Professor Miksch agreed but said the process worked well if the faculty members fit in Education and Human Development. But a number of faculty members in General College had been hired to teach and do research in disciplines that had nothing to do with Education and Human Development, so they went to different departments around the University. They believed that their salary funds would go with them, but they did not; Professor Miksch agreed with Vice Provost Carney that there were no salary dollars that traveled with faculty members but said that that is what the faculty believed. The dollars went with them to the extent that they continued to be paid, Dr. Carney observed, and it didn't matter what the source of funds was, and probationary faculty members were not shown the door. That belief on the part of faculty members that their salary traveled with them is the wrong way to view the University's budget.

Ms. Smith said she thought the initial question was whether there was some group of people to whom section 12 was not applied. Professor Miksch said that some faculty members believed they had rights under section 12 that they did not have. So people or units were told by the administration that these were not programmatic changes and section 12 did not apply, Ms. Smith asked? Dr. Carney said that no one was told that.

Professor Miksch said that one of the Committee's goals is to make clear what section 12.3 means. Ms. Smith said she understood; under section 12, if there is programmatic change, a University officer meets with a faculty member and reviews the options under section 12.3. Was a unit closed but faculty members not offered the options, she asked? Dr. Carney said that was not the case. In that case, there may not be disagreement between the administration and the Committee, Ms. Smith commented. Whether people were satisfied, or how the budget works, are different questions, she said. Was there any unit that did not meet with the president's delegate, as called for in section 12.3? Dr. Carney reported that she met with people many times during the process.

Professor Miksch said that what the Committee is trying to get at, is trying to tease out, is the types of programmatic change and which are covered by section 12 and what is provided, because there were misperceptions in the 2005 changes. Professor Flink said that programmatic change in concept is a broad spectrum and one thinks about big structural changes. The Committee's question is what de minimus programmatic change is. For example, if a dean does not allow a program, for three years, to take graduate students; is that programmatic change? It has a big impact on the program but it is not on a scale with closing a college.

Ms. Smith said that as she read what the Committee drafted, she concurs with paragraph A and finds that B confuses things and suggests the opposite of what the Committee thinks. She said she believes section 12 applies in the case of paragraph B, which suggests that a unit is just moved and faculty members receive an MOU. Part of the confusion, Professor Ho said, is the faculty misperception about structural change and dissolution and how money is marked.

Dr. Carney said that what was the source of some anguish was that faculty members wanted to move to other departments, but the potential receiving departments voted not to accept them—they didn't want to tell a tenured colleague that they were not wanted in a unit and they wanted the dean or the provost to take the responsibility, so funding became identified as the issue. In some cases units did not want to take a faculty member from another unit that was being moved because it would mean that the

receiving unit would not have funds available to pay for someone in an area in which they had plans to hire. It was very complicated, Dr. Carney said, and often it was simply a matter of "fit." The question still comes up, she added.

Professor Miksch said that the language of paragraph B came from the memo that then-Provost Sullivan wrote to clarify the procedures that would be in place for faculty members affected by the 2005 organizational changes. But she agreed that the Committee concurs with Ms. Smith that the language makes it sound like such changes are not covered by section 12, but paragraph B changes in fact should be covered by section 12.

Professor Miksch said that paragraph C of the draft addresses how someone knows if there is programmatic change, when moving appointments calls for invoking section 12. The draft paragraph C, about which Committee members and Dr. Carney continue to have questions and which will undergo further editing, read as follows (between the \* \* \*):

\* \* \*

**C. Procedures in the Event of Dissolution of an Academic Unit:** As specified in section 12, in the event that programmatic change leads to dissolution of an academic unit, the University has an obligation to continue employment of all regular, tenured faculty members from that unit in accordance with the terms of their employment and to seek suitable reassignment of such faculty members, which may include an offer of training for a new position. Additionally, the University has an obligation to regular, probationary faculty to attempt to continue employment in accordance with the terms of their employment or achieve a satisfactory alternative.

#### **1. Re-assignments for Tenured Faculty**

In cases of dissolution of an academic unit, the president will designate an administrative officer responsible for determining appropriate reassignments and training to be offered to faculty members affected, as specified in *Faculty Tenure* section 12.3. The officer will consult with each such faculty member and assist the faculty member in pursuing reassignments to other academic units. The faculty member from the unit undergoing dissolution must accept any reasonable assignment or offer of retraining. If agreement cannot be reached, the University officer will assign new responsibilities, but only after consultation with the faculty member.

As specified in *Faculty Tenure* section 12, the University has the obligation to assign faculty members retained after dissolution of their unit to responsibilities as closely related to their original discipline as is practicable, to allow them time in which to continue scholarship in their original discipline 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.

Reassignments can be made to units and campuses within the University of Minnesota system to allow for the affected faculty member to teach and perform scholarly work in his or her original discipline to meet the requirements of subsection 12.3 of *Faculty Tenure*. If such an assignment is not possible, the University may consider other options, including assignment to:

- teach in another field in which the individual is qualified;



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

A Memorandum of Understanding will be executed between the University and each reassigned tenured faculty member specifying the standards and expectations that will be used after reassignment to an academic unit to consider the faculty member for promotion (if applicable), annual review, and compensation.; in particular, tenured faculty members reassigned to another academic unit may choose to be evaluated according to the departmental statement applicable in their original units under *Faculty Tenure* subsection 7.12.

If the tenured faculty member accepts an assignment that requires retraining, then the MOU will include the details of the retraining including the duration, the University's financial obligations in providing this retraining, and the plan for annual reviews of performance during the retraining period. Once the retraining is completed, the MOU will be re-examined to determine if it needs further revision to accommodate the faculty member's new position.

A tenured faculty member may be reassigned either full or part time to perform administrative duties, including professional practice in a field in which the faculty member is qualified. That is, the faculty member may continue with some teaching, research, or service duties as a faculty member and have some professional/administrative responsibilities as well. In these cases, the faculty member retains indefinite tenure at the University of Minnesota but may have an administrative/professional (P & A) appointment that is annually renewable. The MOU in these cases must specify the duties and responsibilities of this position, the annual review process, and the bases for non-renewal. If a tenured faculty member does not meet the performance standards of the reassigned P & A position, she or he can receive a notice of non-reappointment for that position. The tenured faculty member would then be reassigned and/or retrained for a new position. Non-renewal in a P & A position does not affect the tenured status of the faculty member.

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

In place of the severance payment provided by this section, a faculty member may elect an alternative severance program for which he or she is eligible at the time the appointment is terminated.

## **2. Re-assignments for Probationary Faculty Members**

In cases of dissolution of an academic unit, the president will designate an administrative officer to work with the faculty members affected on issues of reassignment or other support. The officer will consult with each such faculty member and assist the faculty member in pursuing reassignments to other academic units, determine potential retraining (if appropriate), offer assistance with job relocation, or offer severance.

If reassignment occurs, a Memorandum of Understanding will be executed between the University and each reassigned probationary faculty member specifying the standards and expectations that will be used after reassignment to an academic unit to consider the faculty member for tenure (if applicable), promotion, annual review, and compensation.; in particular, regular probationary faculty members reassigned may choose to be evaluated according to the departmental statement applicable in their original units under *Faculty Tenure* subsection 7.12.

If the probationary faculty member accepts an assignment that requires retraining, then the MOU will include the details of the retraining including the duration, the University's financial obligations in providing this retraining, and the plan for annual reviews of performance during the retraining period. The probationary period can be extended for up to three years to complete the retraining. Once the retraining is completed, the MOU will be re-examined to determine if it needs further revision to accommodate the faculty member's new position. The probationary period will continue and the probationary faculty member will be evaluated annually and for the tenure and promotion decision with the chosen 7.12 statement.

A probationary faculty member may be reassigned part time to perform administrative duties, including professional practice in a field in which the faculty member is qualified. That is, the faculty member may continue with some teaching, research, or service duties as a faculty member and have some professional/administrative responsibilities as well for the remaining percentage of the appointment. In these cases, the applicable departmental statement will be specified in the MOU to determine the standards used to evaluate the probationary faculty member for tenure and promotion; the probationary period may be extended up to three years to allow the faculty member to meet the standards for teaching, research, and service.

A probationary faculty member and the administrative officer may elect to pursue options that involve terminating employment at the University of MN. In this case assistance will be provided in locating other employment and/or severance pay will be determined. Included will be

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.

In place of the severance payment provided by this section, a faculty member may elect an alternative severance program for which he or she is eligible at the time the appointment is terminated.

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**[Please note, the above text between the \*\*\* is DRAFT language being considered by the Committee as part of new procedures to accompany section 12 of the tenure regulations.]**

Professor Ho said that merger could seem like closure. Dr. Carney agreed. The College of Natural Resources was closed and moved into what became the College of Food, Agricultural, and Natural Resource Sciences; two departments were merged. It is difficult to predict what programmatic changes will occur in the future and it would be good to have procedures in place.

Ms. Smith said that the discussion is using words that are not in the tenure policy. She said she assumes the goal is to deal with people who do not have their job the next day, but she said she was uncertain how to improve the definition.

Professor Flink observed that the discussion keeps going to the extreme case, dissolution, but what about the hypothetical that a dean says a program cannot take new graduate students for three years? In that case, the faculty's position is fundamentally changed. Ms. Smith asked Professor Flink if he felt the proposed language addresses that case; he said it does not. The challenge is how much micromanagement the Committee wants to do with the procedures. For the faculty, the question is "what can I expect?" Ms. Smith observed that Professor Flink's example is one that is not addressed—but there could be ten more different examples, and while the Committee could develop language for that specific case, doing so would be at too micro a level for broad procedures. Dr. Carney said that they had stopped drafting the procedures at that point; there is a hierarchy of programmatic change, and units regularly make programmatic changes when they change the credits for a major, for example. The procedures should not go to that level.

Section 12 speaks more broadly, Ms. Smith agreed, and noted the language about "change leads to discontinuation of a program." The examples cited at this meeting seem consistent with what has been done in the past. In the case of merger, nothing changes for people. Dr. Carney said that in the case of merging two departments when the two colleges were merged required a great deal of work and it was not easy. Ms. Smith said it sounded like that would not be a section 12 case.

Professor Flink said that one thing the Committee wrestled with in terms of the hierarchy of change was somewhat analogous to constitutional review by the U.S. Supreme Court: there are varying levels that change must meet (e.g., strict scrutiny, intermediate scrutiny, and rational basis). Is there a way to develop procedures without micromanagement that say to the provost that there must be a level of dialogue when a certain level of change is reached?

Dr. Carney said that the constitution of a college may say that the college must vote to close a program; a number of constitutions have such a provision. A grayer area is suspension of admissions; there may suddenly be no faculty in a program, so the dean suspends admissions. But program closure often occurs only when a college governing body votes that it wants the program closed.

Professor Miksch returned to Ms. Smith's point about tenured and probationary faculty members; the tenure policy treats them the same. Professor Kimberley said the question first needs better definition, whether it is programmatic change to change graduate-student admission, credits for a major, and so on, because that changes how one interprets the problem for probationary and tenured faculty members. Her original draft language was about program closure.

Ms. Smith asked if the Committee was talking about programmatic change that did not lead to reassignment or "receiving unit" questions. Professor Miksch said that it needs to be clear so that all know when section 12 comes into play (or not), and what happens if it does. She noted that she also serves on an ad hoc committee that is reviewing all the college constitutions and said that some constitutions are very specific about consultation on programmatic change while others say nothing at all about it. And people have different ideas about what "consultation" means.

Ms. Smith said she did not believe the Committee was very far away from reaching a conclusion.

The Committee agreed it would continue to work on the definition of programmatic change and would return to the matter in the fall. Professor Miksch thanked Ms. Smith for joining the meeting and providing her perspective.

### **3. Graduate Student Academic Freedom Appeals**

Professor Flink thanked the three graduate students for joining the meeting to discuss academic freedom appeals for graduate students. The Committee has been considering graduate student academic freedom and the state of limbo they could be in because there are no documents that define clearly where they would take concerns and when they are protected. He said the Committee hopes it can get at how to address the question at the institutional level and it is at the point that it may want to recommend policy. He asked what issues they have heard about.

Mr. Petty said that one question, for graduate students who are instructors, is what decisions they can make versus what they can be told to do.

What about research, Professor Miksch asked? The Committee could talk about best practices; in teaching, one is being supervised, unlike tenured faculty, who are not, while in research graduate students have an adviser and a committee, but there could be academic-freedom issues that are not employer-employee related. Do they hear concerns about that?

Mr. Petty said he has not in his department. Ms. Scott said that in her experience, her research (at another institution) received media attention and she was not sure what she should say. It is a gray area, what her academic freedom is vis-à-vis the University of Minnesota about research done elsewhere.

Professor Flink inquired about consequences: what protections exist if a graduate student's research is very controversial? Tenured faculty members have protections if their research makes things difficult for the University, but with graduate students, the University can make a fast decision about their future.

Professor Miksch observed that the University's policy is about academic freedom and responsibility; someone engaged speaking about their research must make it clear he or she is not speaking on behalf of the University. Several people brought to the Committee's attention that when they wrote a letter to the editor or an op-ed piece, they did not identify their affiliation with the University but the publication did. She said that people just have to do the best they can and when they do, she cannot imagine that the University would take any action.

Dr. Craig said that the graduate student might say the right things but still worry about retaliation. Professor Miksch agreed. There are concerns about a graduate student being told not to do certain research because it is too controversial; where does the adviser role end and academic freedom come into play? And where does the graduate student go with such a concern? Is there concern about this among graduate students?

Mr. Petty said he has been surprised at how oblivious the University is to what graduate students are doing. One graduate student's research got the heads of Fortune 500 companies fired and led to hearings in Congress and Parliament.

If there is not a problem, does the Committee need to develop a policy to anticipate problems, Professor Flink asked? As the steward of academic freedom at the University, the Committee could be concerned that a hammer could come down on a graduate student and there would be no clear path for the student to follow in response. Professor Kimberley inquired why the Student Conflict Resolution Center was insufficient for the purpose. It could be, Professor Flink said, but usually conflict resolution does not rise to the level of academic freedom. But it could be the starting place. And then what, if the issue is not resolved, Professor Miksch asked? The student should go somewhere to someone with authority, Mr. Petty suggested. To the provost's office, Professor Miksch asked? That could be the pathway the Committee suggests, Professor Flink agreed.

What also came up in the discussions of the white paper were P&A employees, for whom the Senate Judicial Committee is not available to make recommendations, Professor Miksch recalled. Ms. Chalmers said that she wished her office (the Office for Conflict Resolution) could ask for from the Senate Judicial Committee because her office does not have the same level of expertise to deal with academic freedom issues. Perhaps the Office for Conflict Resolution (OCR), the Senate Judicial Committee (SJC), and the Student Conflict Resolution Center could work together on developing a process for academic freedom complaints? It is clearer for faculty and P&A staff where they should go (faculty go to SJC; P&A staff go to OCR); for graduate students, it is the Student Conflict Resolution Center and then eventually the Provost if not resolved. Professor Kimberley surmised that in the case of graduate students, it may not usually be a pure academic-freedom issue—it could be an employee-employer issue or a behavioral issue.

Does that depend on what hat one is wearing as a graduate student, Ms. Scott asked? It does, Professor Kimberley said. So one goes different places, depending on whether it's teaching or research, Ms. Scott concluded. Professor Miksch agreed; if it is an issue as a student, he or she goes to the Student Conflict Resolution Center; if as an employee, other offices are involved.

Do graduate students have different academic freedom than faculty members, Ms. Scott inquired? Professor Flink said that this Committee was established when academic freedom was situated only with faculty, then P&A members were added because they also encounter questions about academic freedom, and now graduate students, who do much teaching and also do research, will also be members. Professor Miksch said her understanding is that by Board of Regents' policy, academic freedom covers everyone, and the AAUP has special suggestions related to graduate students. She said she did not know if the University follows all of those AAUP recommendations.

Professor Flink said that he and Professor Miksch would have a conversation with graduate students to tease out remaining issues and would come to a meeting early in the fall with suggestions.

Professor Miksch thanked the graduate students and 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.