MEMORANDUM

To: Faculty Executive Committee
From: Faculty Rights, Privileges and Responsibilities Committee (FRPR)
Date: November 1, 2015
Re: Comments on the September 3, 2015 Provost Office Recommended Changes to the Faculty Code of Rights, Responsibilities and Conduct (FCRRC) as Passed by the Faculty Senate on April 16, 2015

FRPR has met and reviewed the changes that the Provost’s Office proposed for the FCRRC as passed by the Faculty Senate April 16, 2015.

FRPR is concerned that the changes proposed by the Office of the Provost (Memo from Vice Provost Hummert to Faculty Senate President Beisecker, September 3, 2015) represent:

- A significant diminution of faculty rights,
- A significant increase in the authority of the administration to unilaterally set policy and take disciplinary actions against a faculty member, and
- A movement away from shared governance of the University.

Power over faculty rights

Issue: Article I addresses those laws or policies that can override faculty rights. The provost added “University policy” to the list of legal provisions that can override faculty rights.

Recommendation: FRPR recommends that these changes not be adopted.

Rationale: “University policy” as a generic abstraction currently can be set by the University administration without participation of University governance. The Provost’s proposed language, in its use of this terminology, therefore permits the administration to override faculty rights by the simple adoption of a University policy. The University Policy Program in the University Policy Library identifies the hierarchy of policies from the law at the top, to KBOR policies next, and University policy next. A code of faculty rights is needed to protect faculty members from University policy overriding those rights. http://policy.ku.edu/university-policy-program.

In addition, the Process for Developing a University Policy does not explicitly state that University Governance be included in the development of University policies. Therefore, a code of faculty rights is
needed to articulate and affirm the collective acknowledgement of the need for shared governance of the University. http://policy.ku.edu/policy-development-process

The proposed addition appears in the preamble to Article I, the preamble to Article III, Article III Section 10, and Article III Section 11.

**Changes to FCRRC**

*Issue:* Article I details how the FCRRC can be changed. The Provost’s office has introduced new language that makes changes to the FCRRC subject to approval by the Provost and Chancellor.

*Recommendation:* FRPR recommends that these changes not be adopted.

*Rationale:* Changes to faculty rights should be a matter for the Faculty Senate alone. The AAUP informs FRPR that “Such Codes in other U.S. Universities do not give their Chancellors the power of changing their contents.” (Memo to FRPR from AAUP, March 28, 2015.)

**Enumerated faculty rights**

Article III enumerates faculty rights.

*Right 3: The right to participate in the determination of policy*

*Issue:* Right number 3 states that faculty members have the right to participate in the determination of school, department and university policies and procedures. The Provost’s proposed language dilutes this right from that of determination of policy to that of having input in its determination by the administration.

*Recommendation:* FRPR recommends that these changes not be adopted.

*Rationale:* The changes proposed by the Provost reduce the faculty’s rights to share in the determination of policy to only the right to participate in the development of policies and procedures. Of concern is that this change privileges the administration to assume the authority for setting policy without full faculty participation in the determination of policy. If both the administration and faculty are to operate from a position that upholds the standard of shared governance, then faculty members – via faculty governance – should have the right to participate in the determination of school, department, and university policies and procedures. (See comments above on the shortcomings of the current University Policy Program)
Right 4: The right to participate in the determination of assignments and responsibilities

Right 4 states that faculty members have the right to participate in the determination of teaching and other responsibilities. The changes proposed by the Provost reduce the faculty’s rights to the ability to provide input.

Recommendation: FRPR recommends that these changes not be adopted.

Rationale: The proposed changes invite abuse as administrators can assume the authority to set assignments and procedures without meaningful faculty participation in the decision. This raises a similar concern as Right 3 above, in that this change privileges the administration to assume the authority for setting assignments and responsibilities without full faculty participation in the determination of these assignments. Again, if both the administration and faculty are to operate from a position that upholds the standard of shared governance, then faculty members – via faculty governance – should have the right to participate in the determination of teaching and other responsibilities.

Right 5: The right to know about personnel files

Issue: Right 5 established the right of individual faculty members to know about personnel files held on the individual faculty member. The Provost proposes to strike this right.

Recommendation: FRPR recommends that these changes not be adopted.

Rationale: This section expresses the fundamental right of any faculty member to be informed of any files that the administration holds upon the faculty member.

Right 7: The right to due process in all disciplinary matters

Issue: Right 7 states that all faculty members have a right to due process in all disciplinary matters. The Provost’s proposed changes eliminate the faculty right to due process, in essence replacing a peer review process with an a priori presumption of guilt in all matters of potential disciplinary action.

Recommendation: FRPR recommends that these changes not be adopted.

Rationale: The right of a faculty member to a hearing has been struck and replaced with a right to appeal a decision after it has been made and a sanction imposed. Due process should apply to all aspects of disciplinary proceedings, not just to appeals after the fact. This is inconsistent with current language in the Faculty and Unclassified Handbook which calls for due process for all faculty in any
Right 17: Reduction of compensation

Issue: Right 17 states that faculty compensation may be reduced only as specified in University and Board of Regents policy or state law. The Provost’s proposed changes eliminate this right entirely.

Recommendation: FRPR recommends that these changes not be adopted.

Rationale: If this right is eliminated, the administration has few boundaries on its ability to reduce compensation for tenured or tenure-track faculty. See Policy Statement: Limitations on the Reduction of the Salary of an Exempt Employee http://policy.ku.edu/human-resources/exempt-salary-reductions

Administrative Leave

Issue: Article V sets the standards under which a faculty member may be placed on administrative leave. The Provost’s proposed changes alter the Article to administrative leave without pay and reduce a faculty member’s rights to only a right to appeal the process after administrative actions have been taken.

Recommendation: FRPR recommends that these changes not be adopted.

Rationale: Article V originally set limits on the ability of the administration to impose administrative leave. The Article limited such leave to situations where the conduct of a faculty threatened the safety of members of the University community.

The Provost proposes to revise the Article so that it can impose administrative leave without pay. This sanction can be imposed when the administration views “a faculty member’s failure to perform a primary job responsibility amounts to abandonment of duties.” With the many and varied commitments on a faculty member’s time in matters of teaching, scholarship and service, such a singular accounting for the threshold of abandonment could likely be arbitrarily applied to any faculty member at any time, and for any length of time. Administrative leave requested by the faculty member and granted by the administration, as allowed by Boards of Regents Policy, can be mutually beneficial for short term activities outside of the normal expectations in teaching, research and service. In contrast, administrative leave without pay imposed on a faculty member by the administration is a tangible sanction, and a faculty member should not have leave with or without pay imposed without due process. It should be imposed only in the most serious circumstances where conduct threatens the safety of a University community member. It should be imposed only after proper notice, findings of facts and hearings. The faculty member should have full rights before the imposition of the leave and these rights should not be reduced to the right to an appeal after the administration imposes the leave.
Sanctions

Issue: Article VI specifies faculty rights when sanctions are imposed as part of disciplinary action. The proposed changes by the Provost removes the faculty member’s rights to due process and the right to a hearing, in essence replacing a peer review process with an a priori presumption of guilt in all matters of potential disciplinary action.

Recommendation: FRPR recommends that these changes not be adopted.

Rationale: Faculty members must have full due process rights during any disciplinary action including the right to ask for a hearing before the designated faculty body; faculty members must not wait until after a sanction has been imposed to gain rights. These due process rights are part of the Faculty and Unclassified Staff Handbook, see page 37.  