

University of Kansas Faculty Senate
Faculty Rights Privileges and Responsibilities (FRPR) Committee
Minutes of Committee Meeting October 19, 2015
33 Strong Hall, 3:00 pm to 4:00 pm

Members attending

Chair: Kirk McClure, Urban Planning (2016)	mccclure@ku.edu	
Mary Banwart, Communications Studies (2018)	mbanwart@ku.edu	Faculty Senate
Sean Seyer, Humanities (2018)	seanseyer@ku.edu	
Nancy Kinnersley, EECS, (2017)	nkinners@ku.edu	
Amalia Monroe-Gulick, Libraries, (2016)	almonroe@ku.edu	Faculty Senate
Rick Hale, Aerospace Engineering, (2016)	rhale@ku.edu	

Members unable to attend:

Laura Hines, Law (2016)	lhines@ku.edu
Dean Williams, Institute for Lifespan Studies, (2018)	deanwms@ku.edu

Approval of Minutes for Meeting October 1, 2015

Moved Monroe-Gulick, seconded Seyer; Passed unanimously.

Discussion of Draft Memo to the Faculty Executive Committee (FacEx) on the Administration's Proposed Changes to the Faculty Code of Rights, Responsibilities and Conduct (FCRRC)

Discussion of the proposed changes as a whole

Seyer led discussion of table from Joe Harrington, Professor of English and member of FacEx (attached to minutes).

Discussion of the codes from other Kansas Schools

Monroe-Gulick researched the codes of other schools in Kansas. She found that all of them use the KBOR policy for Leave without Pay which is not a sanction. In addition, she could not find many references to university policy, but there is one example in her notes. Also, most of the other handbooks

combine policies with code. It might be worth taking a look at the KBOR policies as part of our rationale. (Her notes are attached to the minutes.)

Discussion of the proposal to let University Policy override faculty rights

Hale led discussion of the inclusion of language that permits University Policy to override faculty rights. As the administration can set University Policy, the administration would effectively be able to negate any faculty right by the simple adoption of a policy.

Discussion of the proposed reduction in the faculty right participate in the determination of policy

Discussion identified changes to the code suggested by the administration that would eliminate the faculty right to meaningfully participate in the development of policies at the school, department and University level. Rather, the faculty would be reduced to a role of providing input. Committee members agreed that if the administration determined policy without faculty participation, it is a movement away from shared governance of the University.

Discussion of the proposed reduction in the faculty right to due process

Hale led discussion on the issue of due process. The administration proposes changes to the faculty code of rights that reduces a faculty member's rights to due process throughout an administrative process such as a disciplinary hearing. The faculty member's rights are reduced to the right to appeal. If the faculty member does not have rights during the hearing process, the faculty member is placed at the disadvantage. After the process has been conducted, the presumption of innocent until proven guilty is lost as is the ability to see evidence and confront accusers. If the administration controls the process of sanctioning faculty members without due process, it is a diminution of the meaning of tenure.

Discussion of the proposed changes to the issue of administrative leave

Monroe-Gulick led discussion of how other schools handle administrative leave. Agreement was found that:

- Immediate imposition of administrative leave by the administration should only be imposed when the faculty member's actions threaten the safety of some member of the University community, even then, the faculty member should retain rights to appeal the action.
- There should be provision for administrative leave without pay as an opportunity at the request of a faculty member for the faculty member to temporarily leave the University to pursue some alternative effort that would benefit both the faculty member and the University upon its completion and the faculty member's return to the University.
- Administrative leave as a sanction, with or without pay, should be imposed only after a process that reflects shared governance and due process for the individual faculty member.

Discussion of the proposed substitution of the word "Impartial" for the phrase "consistent and unbiased"

Discussion generally agreed that this is not a change that threatens faculty rights.

Adjourn: 4:00 pm

Comparison of current Code1 with Senate ratified Code2 and Provost Office’s proposed amendments3

(in roughly the order in which they occur in the Senate and Provost’s versions)

<i>Issue</i>	<i>Current Code [C]</i>	<i>Senate Code [S]</i>	<i>Provost’s Code [P]</i>
1.) Faculty Code pre---empted (overridden) by:	Board of Regents Regulations; University Code, FSRR, USRR.	Board of Regents Regulations; University Code, FSRR, USRR; + state & federal law.	Board of Regents Regulations; University Code, FSRR, USRR; state & federal law + [unspecified] “University policy” [this last clause is added throughout].
2.) Procedure for amending Faculty Code	No provision.	Only by Faculty Senate.	Only by BOTH Faculty Senate AND Provost, & “subject to the ultimate authority of the Chancellor.”
3.) Manner of Application of Policies	Not addressed.	“consistent and unbiased”	“impartial”
4.) Role of Faculty in Policy-Making	Right to participate in <i>determination</i> of policies.	Right to participate in <i>determination</i> of policies.	Right to participate in <i>development</i> of policies.
5.) Role of Faculty in Determining their “Assignments & Responsibilities”	No provision.	Faculty have the right “to participate” in.	Have right to “provide information to assist” in, subject to “University policies” writ large.

1 Approved by Chancellor and Faculty Senate in 1971; amended 1994.

2 “FacEx [proposed] with FRPR Amendments 4/14/2015,” passed “without dissent.,” 16 April 2015.

3 As outlined in a “Policy Revision Draft,” dated 1 Sept. 2015: “Code . . . [as] Amended Provost’s Office . . . following conversations with governance leaders.”

6.) Freedom of Information on Faculty	No provision.	Faculty have rights “to be informed about [University] files that contain information about them,” to examine them and to challenge their accuracy & completeness.	No such rights delineated. [Substitutes statement of types of files retained and assurance of their confidentiality].
7.) Due Process Rights for Faculty	Entitled to hearing to review of Leave without Pay only.	Faculty are entitled to due process and a <i>hearing</i> for any proposed sanction [presumably to determine innocence or guilt thereof].	Faculty are entitled to <i>appeal</i> of all sanctions [presumably an appeal of a determination of guilt that has already been made].
8.) Right of Faculty to Resources in support of teaching and research	Right to avail themselves of “University facilities.”	Right to “consistent and unbiased treatment” in all such allocations.	No such rights delineated.
9.) Removal of tenured faculty	Faculty Rights Board may recommend to Chancellor that “faculty member be dismissed . . . for an indefinite period.”	Only as consistent with Faculty Senate Rules and Regulations; burden of proof on University.	University “will follow established policies and procedures in such cases” [these are unspecified].
10.) Reductions of faculty salaries by Administration	Not addressed.	“[O]nly as specified in University and Board of Regents policy” or state law; burden of proof on University	Not addressed (i.e., no restrictions in this regard).
11.) Reprisals against faculty	Not addressed.	Faculty “may not be subject to punishment or reprisal” for exercise of rights and privileges or in grievance procedures.	Faculty protection against retaliation extends only to grievance procedures.

12.) Administrative Leave [with(out) Pay] for Faculty	Unpaid: Only for failure to meet classes.	Paid: only if faculty member “presents an imminent danger to the safety of members of the community.”	Unpaid: for “abandonment of duties (e.g., failure to meet scheduled classes without notification or approval) . . .” [no other examples provided]
13.) Procedure for Determining Sanctions against Faculty	Final appeal by Judicial Board; “If another University tribunal or body” has any jurisdiction, it hears claim first.	Only according to Faculty Senate Rules and Regulations.	May be charged with violating Code “under Article II.7 of this Code” [sic] ⁴ , which is categorized in the Policy Library as a “Provost’s Policy.”

Analysis: Effects on Faculty

(see above for item designated by number)

I. Items that Should Not Be Accepted / Conceded by Faculty Senate

P---1.) This clause is far too broad and must be struck. If the Code can be preempted by “University policy” writ large, that would include just about anything – including a “Provost’s Policy.” Therefore, if a future Provost were to promulgate a separate policy that further erodes faculty rights, that policy would take precedence over any protections embodied in this Code. Provost Hummert says this clause has been added “for purposes of completeness.” Indeed so: that is precisely the problem with it. In fact, the very broadness of this clause could cause more legal problems for the Administration than it solves.

P---2.) If this stays in, we had better be VERY happy with the rest, because this is a recipe for gridlock. The five---year debate over the Code suggests to me that things happen very slowly indeed between the Senate and Provost’s, when it comes to anything controversial – amendments not least. Why not take a page from the US Constitution? [KU actually had a constitution from 1915 - 1917, BTW] Say instead, “The Faculty Senate shall be required to take into consideration any amendment to this Code proposed by the Provost or Chancellor

⁴ There is no Article II.7 in any of the versions. The writer apparently meant Article III.7.

[who is, after all, the Ultimate Authority]. The Faculty Senate may amend this Code by a simple majority. The Provost may veto said amendment, within a 7-day period. The Provost's veto may be overridden only by a 2/3 majority of the Faculty Senate.”

As for the “Ultimate authority of the Chancellor” clause: Provost Hummert says this clause is necessary “for clarity and transparency.” But the authority of the Chancellor is enshrined in statute law (KS Code Ch. 76, Article 3). Is state law insufficiently clear and transparent? In fact, the effect of this clause would be to extend the Chancellor's power beyond that delineated in Kansas law. If we pass a Code with this clause in it, the implication is that we, the faculty, cede the authority to make policy regarding faculty rights, responsibilities, or conduct to the Chancellor and accede to any changes s/he chooses to make. (At any rate, I expect this legal theory will arise, if push comes to shove.) We could, however, specifically mention KS Code Ch. 76, Article 3 in the Title/Preamble (rather than simply “State law”). If that doesn't satisfy GC, then ask them why, *from a legal point of view*, they want this clause so badly. What fear or hope does it express, on their part? The Code is also subject to the Kansas and US Constitution and the laws of physics – why not mention those, too?

7.) Throughout the document, the Provost's strikes “hearing” and replaces it with “appeal.” “Appeal” implies that a determination of guilt has already been reached. But how is it to be reached, absent a hearing? “An appeal is the first step in questioning a disciplinary action,” Provost Hummert writes. But who determines the disciplinary action to begin with? Or the accusation of the infraction? These questions either should be answered in the Code itself, or as the Senate version does: i.e., that the procedure is already spelled out in FSRR.

P

9) As with “University policy,” “established policies and procedures in such cases” is exceedingly vague and broad. Which

policies? Which procedures? “The dismissal reasons are stated in Board of Regents and University policy” [that phrase again]. Alright. Where? Spell them out – give us chapter and verse. “The policies and procedures vary with the cause for dismissal.” OK

– but where may the policy and procedure for each of the causes be found in the Policy Library? What *are* those causes, for that matter? Administrators should be able to specify these in writing, even if it makes for a long list (the absence of that list could make for very long cross-examinations, I fear). Otherwise, the Senate version (or indeed, the current version) should be retained.

11.) Reprisals should be proscribed as robustly as possible. Reprisals against faculty in the conduct of their duties is precisely the reason tenure was invented – and the reason administrators across the world are trying to get rid of it. One cannot research climate change if one is looking over one’s shoulder to make sure it does not offend an Administrator, Regent, or wealthy and powerful donors. Or if one is teaching LGBT literature, evolutionary biology, Marxist theory, etc. Please don’t tell me that It Can’t Happen Here – in Kansas. Faculty need the strongest protections against retaliation and reprisal, especially in our current political and cultural climate.

12.) The current Code specifies only one reason for Leave without Pay: failure to meet classes. The 9/1/15 Provost’s version is rather vaguer and presents failure to meet classes as a (parenthetical) example – implying that there are other examples that might fall under “abandonment of duties” that are as yet unnamed (“including but not limited to,” as it were). The Code should either spell them out; or we should retain the Senate’s version; or, at the very least, stick with the current provision, which is clear and circumscribed. Otherwise, a future Provost might even be tempted to exercise this right as a budget-cutting measure (not to mention as reprisal).

13.) Again: if the procedures are to be contained within the Faculty Code, they need to be enumerated precisely. How is a faculty member to be accused? By whom? How is guilt or innocence determined, and by whom? Should a faculty member be judged by administrators, or by non-administrative faculty? That is what is at stake here. (Cf. #7, above)

II. Items that It Would Be Advisable to Retain and Whose Concession Would Represent a Step Backward:

4.) The current Code says “determination,” as does the Senate version. GC/Provost’s wishes to change “determination” to “development” because it is “a more accurate descriptor of faculty members’ participation in policy development” The circular logic here reveals the truth – that it will indeed be an accurate descriptor, if approved. (see “winner’s curse”)

5.) We can’t even *participate*? . . . Really??

III. Innovations in the Senate Code that Would be Desirable to Retain, but Whose Elimination Would not Represent a Step Backwards from the Current Code:

3.) I'm not sure what the difference between partiality and bias is – or how a proceeding can be inconsistent and still be impartial – but I'm sure an appellate judge somewhere will be able to tell us. Provost Hummert's explanation for the change is that it harmonizes this Code with FSRR. Another way to accomplish the same thing, of course, would be to replace the word "impartial" with "consistent and unbiased" throughout *FSRR*.

S---

6.) Just as the Chancellor's Ultimate Authority is enshrined in state law, our right to access our files is enshrined in federal law: i.e., the Freedom of Information Act. Though one would prefer it didn't come to that: an internal regulation might be a cheaper and more discreet way to handle this.

S--8.) This would be lovely, but unenforceable if the Provost does not agree to it.

S---

10.) There are provisions for financial exigency in place in FSRR and USRR, and these should govern any reduction in salaries. But, while it would be politick for any Provost to consult the Faculty Senate before lowering their salaries, there is very little way to enforce such a provision, short of the Provost's agreeing to it (other than unionizing).

**Monroe-Gullick: Notes on
KBOR Institutions Faculty Handbook Highlights of Leave without Pay and Other Policies**

Wichita State

- Leave without Pay is only KBOR policy
- 5.06 / Resolution of Internal Disputes for Faculty
http://webs.wichita.edu/inaudit/ch5_06.htm
- CHAPTER 5 / FACULTY BENEFITS AND RESPONSIBILITIES
http://webs.wichita.edu/inaudit/ch_5.htm
- “[Provost and Senior Vice President] works with the Faculty Senate, its elected leaders and its committees to assure and maintain an active faculty role in all matters related to the academic policies of the institution.” 1.03 / University Administration, Policies and Procedures.
http://webs.wichita.edu/inaudit/ch1_03.htm

Washburn

- “VI. FACULTY SENATE
A. PURPOSE AND DUTIES OF THE FACULTY SENATE
1. The Faculty Senate, as the agent of the General Faculty of Washburn University , speaks on behalf of that body to the University community.
2. The Faculty Senate shall consider policies on University matters including academic issues and matters which affect more than one of the Major Academic Units.
3. As the agent of the General Faculty, the duties of the Faculty Senate thus include, but are not limited to:
a. providing a forum for the expression of faculty opinion.
b. exercising primary responsibility in curricular matters, academic programs and standards, changes in graduation requirements, new degrees, new majors or academic programs, elimination of existing degrees or major programs, creation of new academic departments, and recommending changes to the faculty handbook, **subject to the oversight of the University President and the Board of Regents.**”
<http://www.washburn.edu/faculty-staff/faculty-resources/faculty-handbook/faculty-handbook-section-1.html>
- Leave without Pay is KBOR policy
<http://www.washburn.edu/faculty-staff/faculty-resources/faculty-handbook/faculty-handbook-section-5.html#XIA>

Pittsburg State

- Leave without Pay is not a sanction
- Any reference to “university policy” is a clearly defined policy
<http://www.pittstate.edu/dotAsset/39a4f47e-2e78-4bcb-b1ba-5c33c683451c.pdf>

Kansas State

- University Handbook, Section D: Privileges, Benefits, Responsibilities ((July 2006, 06/05/15 revisions)

“By tradition, the faculties of colleges and universities have authority to grant degrees and control all matters dealing with courses and curricula offered by the institution. At Kansas State University, the exercise of these powers is subject to final approval by the Kansas Board of Regents. The faculty of Kansas State University also has authority to participate in the establishment of policies relating to many other all-university problems. To carry out these duties and responsibilities, the general faculty in 1951 created the Faculty Senate as its representative body.”

<http://www.k-state.edu/provost/universityhb/fhsecd.html>

- University Handbook, Appendix G: Administrative Appeal and Grievance Policy and Hearing Procedures
 - very detailed grievance procedure <http://www.k-state.edu/provost/universityhb/fhxg.html>

Fort Hays

- Link to the handbook <http://www.fhsu.edu/provost/handbook/>
- I could not really find anything comparable. I think they have very involved AAUP chapter.

Emporia

- Leave Without Pay section is a directly taken from the KBOR policy that does not address it as a sanction
- Inspection of Personnel Files, “Employees or former employees, with proper identification, may request to inspect their personnel records.” P. 257
- Preamble to Constitution and Bylaws of Faculty Senate state “Within the limits established by law and by the regulations and policies of the Kansas Board of Regents, the faculty reserves to itself the responsibility and the authority for governing itself and the University in a manner conducive to the proper functioning of the University.” P. 321
- All in one document: <http://www.emporia.edu/dotAsset/8123ebe3-2c10-4f3c-9cdb-b9e2e61e0d7d.pdf>

KU Med

- “Leave without pay section” kept within the teaching section only. If this is the argument given to keep this sanction than maybe it should just be limited to this one responsibility? Also they have the wording to file for a hearing not an appeal <http://www.kumc.edu/Documents/faculty%20affairs/Handbook.pdf> p.187