

University of Kansas Faculty Senate  
Faculty Rights Privileges and Responsibilities (FRPR) Committee  
Minutes of Committee Meeting November 18, 2015  
33 Strong Hall, 4:00 pm to 5:00 pm

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*Members attending*

Chair: Kirk McClure, Urban Planning (2016)	<a href="mailto:mccclure@ku.edu">mccclure@ku.edu</a>
Sean Seyer, Humanities (2018)	<a href="mailto:seanseyer@ku.edu">seanseyer@ku.edu</a>
Nancy Kinnersley, EECS, (2017)	<a href="mailto:nkinners@ku.edu">nkinners@ku.edu</a>
Rick Hale, Aerospace Engineering, (2016)	<a href="mailto:rhale@ku.edu">rhale@ku.edu</a>
Dean Williams, Institute for Lifespan Studies, (2018)	<a href="mailto:deanwms@ku.edu">deanwms@ku.edu</a>

Members unable to attend:

Mary Banwart, Communications Studies (2018)	<a href="mailto:mbanwart@ku.edu">mbanwart@ku.edu</a>	Faculty Senate
Laura Hines, Law (2016)	<a href="mailto:lhines@ku.edu">lhines@ku.edu</a>	
Amalia Monroe-Gulick, Libraries, (2016)	<a href="mailto:almonroe@ku.edu">almonroe@ku.edu</a>	Faculty Senate / FACEX

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*Approval of Minutes for Meeting October 19, 2015*

Moved Williams, seconded Kinnersley; Passed unanimously.

*Discussion of the Charge to the FRPR Committee: Develop a Standard Conflict of Interest Definition*

The Charge to FRPR:

Construct a general statement for inclusion in the Faculty Senate Rules and Regulations which will mitigate conflicts of interest in all hearings related to faculty members discipline and/or dismissal. Report to FacEx by **December 1, 2015**.

- a. Consider, then if appropriate, propose the inclusion of the AAUP 1970 Interpretative Statement in FSRR 6.1.2 to the FacEx.
- b. Consider, then if appropriate, propose the inclusion of the AAUP 1958 Statement on Procedural Standards in Faculty Dismissal Proceedings currently located in

<http://policy.ku.edu/provost/FRB-appeals-procedure-for-dismissal> (or other appropriate location within the FSRRs) to FacEx.

- c. Consider, then if appropriate, propose the inclusion of the AAUP 1975 Statement on Teaching Evaluation in FSRR 7.4.2.1 (or other appropriate location within the FSRRs) to FacEx.

Report to FacEx by **December 1, 2015**.

Presenting from FacEx: Professor Ron Barrett-Gonzalez:

Barrett-Gonzalez: There is a need for a single definition of conflict of interest that can be incorporated into or referred to by various policies or procedures. Distributed a definition from the AAUP that reads (in part):

A conflict of interest may most easily be defined as a circumstance in which a person's primary interests and responsibilities (such as the responsibility to analyze research results as dispassionately as possible) may be compromised by a secondary interest (such as financial gain).

Hale: Asked for clarification that what is being sought is a consistent definition.

Barrett-Gonzalez: Yes.

McClure: is the AAUP definition sufficient?

Barrett-Gonzalez: Yes

Hale: Experience with the Conflict of Interest Committee indicates a need to pull together the many versions of conflict of interest that exist in University policies and procedures.

Seyer: Asked if the definition to cover actual conflict of interests or perceived conflict of interest as well.

Barrett-Gonzalez: It is unclear whether the definition can be expected to cover all aspects of conflict of interest but a standard definition is needed as a starting point. FacEx is seeking a definition that can be legally binding.

Hale: A search of University policies is needed.

Kinnersley: NIH and NSF may have definitions that can help.

McClure: FRPR will make every effort to develop a standard definition are report back quickly to FacEx.

#### *Discussion of FRPR Presentation to the Faculty Senate*

McClure invited Barrett-Gonzalez to stay and participate in this discussion.

McClure: FacEx met and discussed the FRPR report on the Faculty Code on Rights, Responsibilities, and Conduct (FCRRC). FacEx asked that I present the report the Faculty Senate. McClure wanted to confirm that FRPR approves of a recommendation to stop negotiations and revert to the 1971 Code rather than compromise away the rights of faculty as proposed by the administration. (Memo from McClure to FRPR is attached to the minutes.)

Barrett-Gonzalez: The old (1971) code is better than a bad code. It would be threatening to the faculty to have due process rights lost and leave without pay imposed.

Hale; Agrees that FRPR need to send a message that maintains its ongoing commitment to the FCRRRC as approved by the Faculty Senate in April, 2015.

Barrett-Gonzalez: Will ask the Faculty Senate to resolve that the FCRRRC passed in April 2015 should remain intact and that the administration approve it without change so that the new Provost will be able to begin work without this issue confronting the new administration.

Kinnersley: Who owns the code?

Barrett-Gonzalez: The Code must be owned by the Faculty.

Adjourn: 4:45 pm

## MEMORANDUM

To: Members of the Faculty Senate Committee on Rights, Privileges and Responsibilities (FRPR)

From: Kirk McClure, Chair

Date: November 17, 2015

Re: **Input sought on presentation to the Faculty Senate on Negotiations with the Administration on the Faculty Code of Rights, Responsibilities and Conduct (FCRRC) as Passed by the Faculty Senate, April 16, 2015 with Revisions proposed by the Office of the Provost, September 3, 2015**

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***Recommendation: That FRPR recommend to FacEx and to the Faculty Senate that it would be better to stop negotiations on the FCRRC than to accept the revised language sought by the administration.***

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### *Meeting with the Faculty Executive Committee*

As Chair of FRPR, I attended the meeting of the Faculty Executive Committee (FacEx) on November 10, 2015. My input was sought when FacEx spoke about possible responses to the administration's proposed revisions to the FCRRC as adopted by the Faculty Senate on April 16, 2015. FacEx asked that I present our report to the Faculty Senate at its December meeting.

FRPR can present the report to the Faculty Senate without recommendation to the Faculty Senate on what it should do next. Alternatively, FRPR can make a recommendation to the Faculty Senate on how it should proceed further in negotiations with the administration.

### *Background*

You will recall that FRPR recommended that FacEx not adopt most of the changes proposed by the administration. FRPR found that the proposed changes:

- Denied due process to faculty members when the administration takes action to sanction a faculty member,

- Moved away from shared governance of the University by reducing the right of faculty members to participate in the development of policies, and
- Threatened tenure by permitting the administration to place a faculty member on leave without pay without having to provide the faculty member with ample opportunity to meaningfully participate in the decision process.

FRPR did not object to a few changes there were simple word choice revisions that did not appear to substantially alter the meaning of the FCRR. An example of this was the changing of the term “consistent and unbiased” to the word “impartial.”

#### *FacEx Position*

There appears to be a lack of agreement among the members of FacEx on how to proceed.

- Some members seem willing to continue to resist the changes proposed by the administration, as recommended by FRPR.
- Some members seem to favor compromising with the administration so as to bring closure to the multi-year process of trying to get the FCRR, as adopted by the Faculty Senate, approved by the administration.

#### *Compromise or Revert Back to the 1971 FCRR*

In effect, the Faculty Senate must choose between:

- The 2015 version of the FCRR with the recommended changes by the administration, or
- Reverting back to the 1971 version of the FCRR as it will stay in force in the absence of administrative approval of the 2015 DCRR.

Some members of FacEx expressed the opinion that it is unlikely that the FCRR approved by the Faculty Senate in April will ever be approved by the current administration. These members asserted that the faculty will be better off reverting to the Code of Faculty Conduct approved in 1971 than to accede to the revisions proposed by the administration to the Code approved in 2015. Other members seemed willing to compromise with the administration in order to bring this long process to a close.

#### *Comparison of the 1971 FCRR and the 2015 FCRR if the administration’s revisions are adopted*

Attached to this memo are both the 2015 FCRR (with the administration’s proposed revisions shown in blue) and the 1971 FCRR. Also attached is the FRPR report to FacEx on the FCRR earlier this month.

#### Limits of the FCRRRC:

2015 FCRRRC: No policy or action by the University or its faculty and staff may violate the rights of faculty except federal or state law, Kansas Board of Regents policy, or provisions of the University Senate Code, University Senate Rules and Regulations, and Faculty Senate Rules and Regulations.

Administration: The administration proposes to add University Policy to the list provisions that can override faculty rights. Because the administration can unilaterally implement policy without faculty approval, the administration could violate the rights of faculty by adoption of policy that is not subject to review and approval by the Faculty Senate.

1971 FCRRRC: If the faculty reverts back to the 1971 FCRRRC there will be no loss as the limitations are the same as approved in the 2015 FCRRRC; university policy cannot override faculty rights.

#### The role of faculty in shared governance:

2015 FCRRRC: Faculty members shall have the right to participate in the determination of policy and procedures at all levels, university, school and department.

Administration: The administration proposes language that reduces the faculty role to having input but not sharing in the determination of policy.

1971 FCRRRC: If the faculty reverts back to the 1971 FCRRRC the faculty will retain the right to participate in the determination of policy.

#### Due process for faculty in any disciplinary proceeding:

2015 FCRRRC: Faculty members have a right to due process in all disciplinary matters.

Administration: The administration proposes language that reduces the faculty rights from full due process to just the right to appeal after the administration has conducted disciplinary proceedings and, possibly, imposed a sanction.

1971 FCRRRC: If the faculty reverts back to the 1971 FCRRRC the faculty will retain some due process rights including the right to request a hearing but these are not full due process rights.

#### Leave without pay:

2015 FCRRRC: Administrative leave can be imposed only in circumstances where the faculty behavior poses a threat to other members of the university community. Faculty members retain all due process rights throughout any proceeding to impose leave.

Administration: The administration proposes language that permits a faculty member to be placed on leave without pay for failure to perform a primary job responsibility. The leave could be

arbitrarily applied to any faculty member at any time, and for any length of time. Under the administration's language, the faculty member may not request a hearing by peers and only gains rights after the administration makes a decision and imposes the sanction.

1971 FCRR: The 1971 code offers some protections against the administration imposing leave without pay in that a faculty member can request a hearing by peers.

### *Discussion*

Review of the provisions of the 1971 FCRR indicate that the faculty would be better off reverting back to the 1971 code than to accept the changes to the 2015 FCRR as proposed by the administration.

To accept the administration's changes would result in a set of losses.

- The administration could override faculty rights by unilateral adoption of policy.
- The faculty role in shared governance would be diluted.
- A faculty member's rights to due process in disciplinary proceedings would be reduced to the right of appeal after the administration carried out a disciplinary proceeding and imposed a sanction.
- Tenure is threatened because the administration would have the power to impose indefinite administrative leave without pay.

The makeup of the administration is changing. It seems unwise to compromise faculty rights away by negotiating with an administration that will soon be directed by a new Provost. There is no way of knowing if the next administration will hold the same position. However, to compromise now gives up any opportunity to have the 2015 FCRR approved, without substantive compromise, by the next administration.

### *Recommendation:*

***That FRPR recommend to FacEx and to the Faculty Senate that it would be better to stop negotiations on the FCRR than to accept the revised language sought by the administration.***