

Mid-Year Report

Committee on Faculty Rights, Privileges, and Responsibilities

Adopted 29 November 2018

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Charge One: ARTICLE VII AMENDMENT / F.R.B. PROCEDURES

Work with FacEx and the Administration to implement or alter the FSRR Article VII amendments, as appropriate and recommend any additional changes to FSRR or FRB procedures to make the appeals process fairer and develop materials to inform faculty of their rights under the current FSRRs.

Recommendations:

1.) FRPR recommends that the Faculty Senate issue an advisory, to be sent to all faculty members and posted on the Governance web site, to the following effect:

“The Faculty Senate advises KU faculty that, under current rules and procedures, an Appeal from Administrative Action to the Faculty Rights Board is not a meaningful administrative remedy or means of redress of grievances. The FRB has dismissed every Appeal from Administrative Action presented to it without granting a hearing, so faculty should expect the same result. Any faculty member contemplating such an appeal should do so only after consultation with a competent attorney.”

The current FSRR VII states, at several points, that in and Appeal from Administrative Action, “grounds for an appeal are limited to allegations that action by an administrative authority violated established University procedure **and** adversely affected faculty rights.” The Faculty Senate in April of 2018 determined that it is practically impossible for appellants to meet both of these criteria, particularly because “established University procedures” is exceedingly vague and because procedures are often minimal or unwritten. This interpretation would help to explain the lack of any successful appeals of this kind. Appeals from Administrative Actions are the only type of grievance that non-tenured faculty can present to the Faculty Rights Board.

Consequently, in an effort to make the grievance process fair and meaningful for non-tenure-track and untenured faculty, the Senate amended Article VII of the FSRRs in April 2018. The Administration has made it clear that it does not intend to approve the amendments except possibly as part of a more global overhaul of the Faculty Rights Board’s (FRB) mission and functions. Such a review would necessitate major changes in the FSRRs, USRRs, and University Code, could take years, and may or may not yield acceptable results. In the meantime, due to the existence of Article VII in its current form, both Administration and Governance effectively are holding out false hope to faculty members that they can successfully appeal an administrative decision unrelated to tenure. As a stopgap measure while talks with the Administration continue, FRPR urges issuance of an advisory using the language above or a similar statement in as many words.

2.) FRPR further recommends that the Faculty Senate offer whatever guidance and support it can to a non-tenure-track faculty colleague, or class of similar individuals, who may wish to challenge the current policies and procedures on the grounds that they do not offer a meaningful administrative remedy for legitimate grievances. This offer could be made as part of the message above.

3.) FRPR recommends that FacEx adopt the text of a brochure regarding faculty rights produced by FRPR [see Appendix One] and that it send this document to all faculty members and make it available on the Governance website.

4.) In discussions with the General Counsel about Appeals of Administrative Actions to the FRB, FRPR advises FacEx to emphasize that the lack of a meaningful and fair administrative review process puts the University in legal jeopardy. For instance, many departments do not have a process in writing for yearly evaluations for tenure-track faculty, and most departments lack a written evaluation process for non-tenure-track faculty. In other words, there are no “established procedures” to follow, in such cases. However, the Faculty Code guarantees that “[e]ach faculty member shall receive from the departmental chairperson or dean a written statement evaluating his/her performance during the preceding year” (III.14). In other words, faculty rights *are being violated* despite the procedures’ being followed – or due to a total lack of procedures.

5.) FRPR further recommends that the Faculty Senate and University Senate adopt the several amendments to governance documents presented below (sections highlighted in yellow indicate amendments already approved by Faculty Senate that are awaiting approval by Administration).

The General Counsel (GC) has observed, quite rightly, that there are certain inconsistencies between references to the FRB in the several governance documents (FSRR, Faculty Code, University Code, USRR). The GC has agreed, in principle, to provide faculty governance with language that would harmonize those references. However, there is no agreed-upon time-line or deadline for that language to be presented, nor is it certain that the changes suggested would be acceptable to the faculty. Therefore, in a pro-active attempt to initiate and galvanize this process, FRPR recommends adoption of the changes below.

In particular, there are two primary issues these proposed changes attempt to address, viz.:

(A.) In several places, the documents refer to academic freedom but *not* to other faculty rights that in fact are secured by the Faculty Code; are recommended by the AAU, AAUP or other professional organizations; or otherwise constitute established practices and usages. Accordingly, the phrase “or other established faculty rights” has been appended to references to academic freedom, where they occur.

(B.) The University Code (Art. 13) sets forth “original jurisdiction” for the FRB. However, FSRR VII refers to “appeals,” which implies *secondary* jurisdiction to review the actions of *another* body with original jurisdiction (department, school, HR, etc.) – just as a court of appeals reviews rulings from lower courts, based on the same laws and procedures. Therefore, the grounds for an *appeal* implicitly depend upon an allegation of a previous violation of the rules and procedures established by those other bodies. Given that the April 12 amendments eliminate the procedural requirement, the words “appeal” and “appellant” no longer make sense in this context.

The recommended changes would bring the USRRs and FSRRs into conformity with the language of Article 13, section 3 of the University Code, which establishes and empowers the FRB. That Article grants the FRB the authority to hear “**any claim or charge** by a member of the faculty” and refers to the FRB as “**a hearing panel.**” Accordingly, we have replaced the term “appeal” wherever it occurs with “request(s) for (a) hearing”: this is the wording used in the Faculty Code (III.7 and VI). Likewise, the term “appellant” is replaced by “complainant.”

N.B.: We have left unchanged the words “appeal” and “appellant” in Article VI of the FSRR. Article VI covers only the promotion and tenure process, where procedures are relatively delimited and where there have been successful appeals; Article VII, by contrast, deals with an Appeal from *any*

Administrative Action (other than those involving tenure). In other words, the latter is much broader and must account for a much wider set of possibilities.

Moreover, the recommendations below do not include USRR Article VII, dealing with Declarations of Financial Exigency, or Article VIII, dealing with Program Discontinuance. Both of these articles contain procedures for faculty “to appeal” dismissal decisions that ostensibly are consequent upon those respective eventualities. FacEx may wish FRPR or another Senate committee to examine these articles as well, at a future date.

Finally, the amendments below, including those passed in April, if approved, will necessitate FRB’s updating the Procedure for Hearing Appeals from Administrative Actions, beginning with the title.

University Code XIII.3

The Faculty Rights Board shall have original jurisdiction over any claim or charge by a member of the faculty that an administrative action constitutes . . . (iv) a violation of the academic freedom **or other established faculty rights** of a tenured or non-tenured member of the faculty . . .

USRR VI:

Section 4. Jurisdiction

~~Disputes~~ **Claims or charges** involving the following subject areas shall be heard by the following bodies:

6.4.1 **(i.)** ~~Disputes~~ **claims or charges** involving faculty members and questions of academic freedom, tenure rights, **or other established faculty rights; and (ii.) claims or charges involving the dismissal, appointment, promotion, reappointment, and non-reappointment of faculty members:**

6.4.1.1 **Hearing.** Faculty Rights Board. (University Senate Code Article XIII. Section 3. Functions)

6.4.1.2 **Appeal.** None within the university. (Faculty Senate Rules and Regulations Article VII. Section 3.)

6.4.2 ~~Disputes~~ **Claims or charges involving questions of faculty rights and responsibilities sanctions delineated by the Code of Faculty Rights, Responsibilities and Conduct (FSRR VI.1)** . . .

FSRR VI:

6.8.1.2 The grounds for the recommendation at one or more levels of review constitute a violation of the candidate's academic freedom **or other established faculty rights.**

6.8.4 . . . If the FRB determines that one or more of the alleged grounds for appeal has been established by the faculty member, then the FRB shall provide a copy of the recommendation to the

department, school, administrative unit, or committee determined to have committed a procedural error, violated academic freedom **or other established faculty rights**, or applied improper standards.

6.8.4.2 If the FRB determines that one or more grounds for appeal has been established by the faculty member, it shall include in its recommendation a statement of whether and, if so, how the procedural error, violation of academic freedom **or other established faculty rights**, or application of improper standards adversely affected the consideration of the case.

FSRR VII:

7.3.1 Jurisdiction. The Faculty Rights Board shall have jurisdiction as provided in Article XIII, section 3, of the University Senate Code to consider ~~appeals~~ **claims or charges** by faculty members of administrative actions involving faculty rights, responsibilities and conduct, when a written ~~appeal~~ **request for a hearing** is submitted and received by the Faculty Rights Board within fourteen days of the administrative action **in question** ~~being appealed~~. Appeals from denial of promotion and tenure shall not be subject to these provisions but instead shall be governed by Article VI, section 8 of the Faculty Senate Rules and Regulations. The Board shall provide for timely disposition of ~~appeals~~ **requests for hearings and hearings**, although it may also provide for deadline extensions in particular cases for good cause.

7.3.2 Procedures. The Faculty Rights Board shall develop written procedures to govern ~~appeals~~ **claims or charges** within its jurisdiction, other than appeals from denial of promotion and tenure governed by Article VI, section 8 of the Faculty Senate Rules and Regulations. To become effective, such procedures, and any subsequent amendments to them, require approval only by the Faculty Senate and the Chancellor. The procedures adopted by the Faculty Rights Board shall:

- a. Be in writing and publicly available.
- b. Provide an opportunity for informal settlement, including mediation if the parties agree.
- c. Require that the ~~appealing party~~ **complainant** state in writing the grounds for ~~the appeal~~ **hearing the claim or charge** and the basis for the jurisdiction of the Faculty Rights Board. The opposing party shall have a reasonable opportunity to respond. The grounds for ~~an appeal~~ **a hearing** are limited to allegations that action by an administrative authority **violated established University procedures and** adversely affected faculty rights. Administrative authorities include tribunals formed within the University to hear and rule on faculty grievances.
- d. Provide to ~~an appellant~~ **a complainant** and opposing parties a fair opportunity to present their cases and arguments in a hearing before the Faculty Rights Board if the Board has determined that the allegations ~~in the appeal~~ are sufficient to warrant a hearing. The Board may **decline a request for a hearing** ~~dismiss an appeal in accordance with the grounds and requirements listed in USRR 6.5.3 for dismissal of grievances by the Judicial Board,~~ **on the grounds that:**

- a. **the claim or charge or another claim or charge involving substantially the same underlying occurrence or events has already been, or is being, adjudicated by proper University procedures;**
- b. **the request for hearing has not been filed in a timely fashion;**
- c. **the Faculty Rights Board lacks jurisdiction over the subject matter or any of the parties;**
- d. **the party filing the request for a hearing lacks standing because that party has not suffered an adverse effect on their faculty rights as a result of the challenged conduct**
- e. **the party filing the request for appeal has been denied the right to file grievances pursuant to USRR 6.5.4, or**

~~f. and also may dismiss an appeal if the appellant~~ **the complainant** fails to provide information requested by the Board within seven days of the Board's request.

At a hearing, the evidence and testimony considered by the Board shall be limited to how the administrative authority's action ~~violated established University procedure and how the alleged violation~~ adversely affected the faculty member's established rights. The Board shall not conduct a hearing to review factual issues that are not disputed or are not material to the dispute.

e. Provide for the initiation of a hearing, if one is deemed necessary, within forty-five (45) days of the ~~appeal request's~~ being filed, absent good cause for an extension of time.

f. Provide that the ~~burden of proof is on the appellant~~ **complainant** ~~to prove~~ **must show by a preponderance of** clear and convincing evidence that ~~there has been a violation of established university procedure and an administrative action has had an adverse effect that the violation adversely affected~~ **on an established faculty right or rights.**

g. Provide for confidential treatment of matters that are at issue in ~~an appeal~~ **a claim or charge**. Before a hearing, the Faculty Rights Board members may not discuss the facts or issues in the case with a party, unless the Chair first notifies the opposing party and provides an opportunity for the opposing party to be present. In addition, Faculty Rights Board members may not discuss the facts or issues in the case with any non-party except to the extent that doing so may be authorized by applicable rules and regulations and with notice to both parties prior to any discussion.

h. Be based on a presumption that any hearing shall be closed to the public if it requires consideration of confidential personnel matters. The Faculty Rights Board may make an exception, however, if the individual or individuals whose confidential information is involved request in writing that the hearing be open to the public.

i. Stipulate that hearings will be electronically recorded.

7.3.3.1 After a hearing, the Faculty Rights Board shall deliberate and determine, by majority vote, whether the ~~appellant~~ **complainant** has ~~proved by clear and convincing~~ **shown by a preponderance of evidence** that the administrative action ~~violated established University procedure and or whether the violation~~ adversely affected an **established faculty right or rights**. A written decision stating the conclusions of the Faculty Rights Board and the reasons for them, as well as any recommended actions to be taken, shall be provided to the parties, the Provost, the Chancellor, and any other administrative officials involved in the case no later than fourteen days after the hearing is completed.

Charge Two: DATA on NON-TENURE-TRACK FACULTY

Work with Vice Provost for Faculty Development Chris Brown, KU AAUP, and others to compile a “census” of non-tenure track faculty, including units that employ them, job titles, FTE percentages, and the number of contracts that are “contingent upon funding” and make recommendations, if appropriate, based on this data.

Recommendation:

FRPR recommends that, in order to raise awareness of the central role of non-tenure-track-faculty (NTTF) to the University, FacEx help to disseminate information regarding non-tenure-track faculty, once a report on the data becomes available, and that it consider the advisability of working with the Administration to conduct focus group interviews of non-tenure-track faculty to determine their concerns and desires, particularly as regards academic freedom, peer review, due process, and shared governance.

An FRPR subcommittee, consisting of Joe Harrington and Dale Urie, has met with Brown and AAUP chapter president Lorie Williams over the course of the past several months to address this charge. Considerable progress has been made, thanks to the enthusiastic assistance of VP Brown and of OIRP. Both Administration and Governance now have a much better sense than before (or possibly ever) of how many non-tenure-track faculty KU employs, which units employ them, their titles, their FTE percentages, and more. The “fact-sheet” below summarizes some of the most important findings (though it currently is being double-checked by OIRP for accuracy – please embargo until further notice). The group anticipates publishing a mid-year report prior to the end of December.

One fact is quite clear: the percentage of KU faculty who are non-tenure-track has been steadily increasing and shows no sign of decreasing, particularly given the current budgetary pressures on the institution. Soon NTTF will produce the majority of student-credit hours on campus. While it is essential to defend tenure and to importune the Administration for more tenure-track lines, governance leaders should recognize that the number of faculty who enjoy the protections of tenure is projected to decline further. It is therefore advisable to consider back-filling protections of academic freedom for the growing ranks of NTTF, if that principal foundation of the institution is to continue to exist.

The University of Kansas cannot function without non-tenure-track faculty

Did you know that on the Lawrence campus . . . ?

- Almost one **half of student credit hours** at KU are produced by non-tenure-track faculty
- Almost **one third of all faculty** at KU are non-tenure-track
- Non-tenure-track **faculty** positions account for:
 - 449 persons
 - 220 part time
 - 229 full time
 - 28 distinct job titles

- most common: Lecturer: 394 persons
 - 174 full-time
 - 220 part-time
- 373 total faculty FTE

- Non-tenure-track **academic staff** positions include
 - 143 persons
 - 30 distinct job titles
 - most common: Assistant Research Professor (32 persons)
 - 135 total academic staff FTE

- Non-tenure-track faculty produce:*
 - 81% of SCH in the School of Social Welfare
 - 76% of SCH in the Business School
 - 50% of SCH in Architecture & Design, the School of Education**, and Pharmacy
 - 42% of SCH in the School of Journalism
 - 40% of SCH in the Law School
 - 37% of SCH in the College**
 - 25% of SCH in Engineering
 - 12% in the School of Music

These schools and units employ the most non-tenure track faculty:

Name	NTTF headcount	NTTF part-time	NTTF FTEs
<i>School w/o depts.</i>			
Business	78	39	57.2
SSW	50	47	15.6
Journalism	16	11	9.7
Music	16	13	6.5
Law	16	14	5.3
<i>Depts & units:</i>			
Design	21	21	8.1
Curriculum & Teaching	30	21	15.5
Health Sport Exercise Sci	14	10	6.7
Special Education	18	9	12.8
Elec Eng Comp Sci	11	2	9.5
English	23	9	18.6
Mathematics	17	8	14.1
Visual Art	11	10	5.4
Pharmacy Practice	18	1	17.6
Bureau of Child Research	22	4	20.1
Kansas Geo Survey	12	1	11.9
Applied English Ctr	33	6	30.8

* These are based on my reading of OIRP bar graphs, so very approximate.

** CLAS and Ed rely heavily on GTAs: ~ 21% and 19% of SCH, respectively

Charge Three: ARTICLE X AMENDMENT / CONFLICT of INTEREST in DONATIONS

Work with SenEx and the Administration to implement or alter the USRR Article X amendment, as appropriate, and consult with faculty and the Endowment Association on the scope and structure an implementation process.

Recommendation:

FRPR recommends that FacEx members, in their role as members of SenEx, continue to remind the Administration that the amendment to Article X awaits their action and encourage them to approve it. FacEx should emphasize that the Amendment represents a statement of principle only and that no enforcement mechanism is proposed. FacEx should try to ascertain any Administration concerns about the Amendment and invite the Administration to propose any changes in the language of the Amendment that might satisfy those concerns. No further action is recommended at this time.

Given the apprehension of many faculty senators around this issue when it was considered in April, the fact that the Senate approved this amendment speaks to the depth of its commitment to preserve the integrity of the educational and research missions of the University. However, given the permanent budget cuts announced in late May and the Faculty Senate's subsequent campaign to re-align budget priorities, FRPR has taken no action on this charge, on the theory that it could make more progress prioritizing other charges this semester. The 6% budget cut and "discovery" of the massive deficit caused by the Central District bond issue have made the Administration desperate for money and unlikely to impose restrictions upon itself in raising it. At the same time, faculty attention is focused on the effect of the cuts, how they are to be absorbed, and what additional or alternate sources of funds might exist, rather than on preventing conflicts of interest in the donation of funds.

Charge Four: ARTICLE V AMENDMENT / K.U. CORE / UCCC PROCEDURES

Work with FacEx and the Administration to implement or alter the FSRR Article V amendment, as appropriate. Consult with UCCC regarding their ongoing revision of the Core goals. Examine Core recertification process and make recommendations, as appropriate. Draft language that articulates governance's relationship to the Core and the UCCC.

Recommendations:

1.) Article V Amendment. FRPR recommends that FacEx members continue to press the Administration to approve the amendment to Article V. FacEx should emphasize that the Amendment represents a statement of principle that is contained in AAU and AAUP statements and is similar to existing clauses in the governing documents of many of KU's peer institutions [see Appendix Two]. FacEx should try to ascertain any Administrative concerns about the Amendment and invite the administration to propose any changes in the language of the Amendment that might satisfy those concerns.

2.) Core and Faculty Governance. FRPR recommends that the Faculty Senate add a new Article V, section 2.1-2.4, to the FSRRs, as presented below.

The AAU 2013 "Statement on Academic Principles" asserts that "the faculty holds the primary responsibility for matters related to education and research, such as setting the curriculum." However, although KU's University Senate Code states that "[t]he Faculty Senate shall act in behalf of the University's faculty in the performance of its powers" (2.5.1), the Faculty Senate was never allowed to vote on the KU Core, which sets the curriculum that all undergraduates must take. This state of affairs has been one cause of antagonism of the faculty towards the Core, which many if not most see as an Administrative policy imposed upon the faculty, and therefore one that lacks legitimacy.

There is little appetite for attempting to revert to the ad hoc system of General Education requirements that existed prior to the Core's commencing. At the same time, the current core curriculum at KU is not controlled by the faculty via its elected representatives, per AAU and industry-wide standards, but rather by a single Committee that reports to the Provost. Moreover, the Core itself is officially listed as an "Office of the Provost and Executive Vice Chancellor Policy."

In order to remedy this conflicted situation, FRPR proposes to incorporate the Core into the FSRRs. This move will have two salubrious effects: (a.) it will grant professional and political legitimacy to the de facto common curriculum for undergraduates at the University of Kansas; (b.) it explicitly will grant the Faculty Senate, as the elected representatives of the faculty who are authorized to act on its behalf, its proper role in governance of that curriculum.

In addition, the language below would establish a procedure for amending the Core Goals. At present, UCCC arrogates to itself the unilateral authority to amend the Core Goals; its internal procedure for doing so is set forth in its by-laws (or "Policies, Procedures, and Understandings" – see Appendix Three). Indeed, the UCCC is currently considering an extensive set of changes to the language of the Goals, including a complete transformation of Goal Three ("Breadth of Knowledge"). It is appropriate for the UCCC to propose changes and to approve them, given that the members have the most intimate knowledge of how the Core functions (and cases in which it does not). However, granting them the *sole* authority to do so runs directly counter to KU's long tradition of shared governance.

Amalia Monroe-Gulick and Joe Harrington have attended most UCCC meetings this semester, in order to get a better sense of how the Committee goes about its business. The two FRPR members initiated talks with the Chair of UCCC and the Vice Provost for Undergraduate Studies regarding a process for incorporating the Core Goals into the FSRRs and to provide for a mechanism for amending the Goals. Following an initial meeting, an outline of the system below was sent to them on November 7. Despite additional requests for a response, none has been forthcoming and promises to do so have not materialized. Therefore, in a pro-active attempt to galvanize and accelerate this process, FRPR recommends adoption of the changes below. These amendments should be adopted in a timely manner, in order to ensure that the Senate has a role in the changes to the Core Goals that UCCC is currently contemplating.

3.) Core Recertification Process. FRPR recommends that the Faculty Senate add a new Article V, section 2.5.5.1-2.5.5.6, to the FSRRs, as presented below.

In May of 2013, the eight faculty members of the CLAS Ad Hoc Committee on the Core Curriculum (including the present Dean) wrote to FacEx and SenEx to express “some concerns about the impact of the emerging Core Curriculum on academic freedom at KU” [See Appendix Four]. In particular, they raised the prospects that, if instructors or departments opt to change the structure or methods of a course that had been certified as meeting a Core requirement (e.g., due to changes in the field or prior experience teaching the course), such changes might cause UCCC to de-certify that course – or, perhaps more disturbingly, that the members of UCCC could demand changes to course content or structure that may run counter to the judgment of experts in the field, as a condition for re-certification. In other words, as the CLAS Committee wrote, “This, we think, raises a problem concerning academic freedom that we should address now, before it becomes a problem later.”

This issue does indeed have the potential to become a problem. FRPR Chair Joe Harrington attended a UCCC meeting on November 13 at which members asserted their opinion that some courses that previously had been certified by UCCC should not have been – and that, on those grounds, it was their prerogative and responsibility to vote to de-certify those courses. Vice Provost for Undergraduate Studies DeAngela Burns-Wallace very effectively and gracefully attempted to steer them away from this intention, citing departmental autonomy. However, while no action was taken at that time, it was not clear that the members were convinced. Moreover, VP Burns-Wallace undoubtedly will go on to bigger and better things, the Chair of UCCC will change every year, and there may or may not be leadership in place who will attempt to thwart this kind of move or others that may undermine the principles of peer review, academic freedom, and shared governance.

FRPR, along with charter UCCC member David Smith, one of the CLAS letter signees, initiated discussions on the topic of re-certification with the current Chair of FRPR in September, and an outline of the system below was sent to him on November 7. Despite additional requests for a response, none has been forthcoming and promises to do so have not materialized. Therefore, in a pro-active attempt to galvanize and accelerate this process, FRPR recommends adoption of the changes below as soon as may be.

Currently, *no written guidelines for re-certification exist*. Thus, there is no guidance for future committee members on their purview and procedure. Given changes in leadership, such written guidelines are imperative for the future effectiveness of this system, while avoiding violations of academic freedom, peer review, and shared governance.

The system outlined below affirms UCCC’s authority to maintain the integrity of Core courses, to engage in dialogue with departments about re-certification, and to require additional information from them, in order to ensure it. Departments are incentivized to comply by the number of “call-backs” authorized (and the labor involved in assembling the requisite information), as well as the possibility of a course’s being labelled “provisionally re-certified,” which undoubtedly will raise concerns about the viability of such a course to satisfy Core goals on the part of advisors and students. They also make it clear that UCCC does not possess the *unilateral* power to de-certify courses, but that this authority should remain primarily in the hands of the persons in the field (i.e., that peer review should be maintained).

Article V. Academic Work

Section 2. KU Core [all subsequent sections would be re-numbered accordingly]

5.2.1 The KU Core constitutes general educational requirements that must be fulfilled by all undergraduate students at the University. The KU Core is defined by the Core Goals. The University Core Curriculum Committee (UCCC) is responsible for certifying courses as meeting the Core Goals.

5.2.2 The Core Goals shall be reviewed every five years by a committee composed of three representatives each of the Faculty Senate and the UCCC. This review will commence at the beginning of the fall semester of that academic year (AY) and be concluded by the spring of the same AY, when the committee will report and make recommendations to the Faculty Senate, the UCCC, and the Vice Provost for Undergraduate Studies.

5.2.3 After the committee’s review, report, and recommendations have been completed, changes to the Core Goals may be proposed by the Faculty Senate, UCCC, or the Vice Provost for Undergraduate Studies. Such changes must be approved by all three parties by the end of the spring semester of the AY following the review year, in order to become effective.

5.2.4 All three parties are expected to engage in good-faith dialogue to resolve disagreements. However, if a change is rejected by any of the three parties, any of them may reintroduce the proposed change, should it choose to do so, in the following academic year.

5.2.5 Recertification.

5.2.5.1 If UCCC is dissatisfied with a re-certification application, it may request more information from the applicant(s) or request that the application be re-configured according to written guidelines.

5.2.5.2 If the applicant complies with this request, but UCCC is dissatisfied with the response, it may explain how the response failed to address the Committee’s concerns, and invite the applicant to address those concerns.

5.2.5.3 If the applicant complies with this second request, and the UCCC is still dissatisfied with the response, it shall invite the applicant and an instructor who has taught the course in the last five years to attend a regular or special meeting of UCCC and engage in dialogue in person.

5.2.5.4 If, after this face-to-face discussion, the UCCC remains dissatisfied by the dialogue/responses, they shall explain the reasons to the applicant and the instructor, verbally and in writing. The course will then be listed as “*provisionally* recertified” for the following academic year.

5.2.5.5 The course may be re-submitted for regular re-certification by the deadline the following academic year, and the new UCCC may consider it, following the process described above.

5.2.5.6 UCCC shall establish a time-table and deadline for each of the steps described above. If the applicant does not respond as requested within the specified time-frame, the course will be considered voluntarily de-certified. If UCCC does not make a decision or request within the specified time frame, the course will be considered automatically re-certified.

Charge Five: CORE SURVEY

Design and conduct a survey instrument or series of focus groups on the Core in the fall semester. This survey or focus groups should include a solicitation for suggestions for revising the (re)certification process; the structure of the Core; or the way it is administered.

Recommendation:

Because UCCC is planning a similar survey, FRPR recommends delaying action on this item until it can determine the content and methodology of UCCC's survey and develop one that will complement rather than duplicate it. Moreover, FRPR can recommend to UCCC that such a survey focus on the content of the Core (i.e., the Goals), rather than procedure alone.

Last year, FRPR decided to abandon the methodology of the three previous Core surveys it had conducted, given that those surveys suffered from declining response rates and were not providing palpably new insights. Instead, it was the sense of the committee that focus groups should be conducted with those most involved in the certification and recertification processes – namely, Chairs and Directors of Undergraduate Studies in the several departments.

In the meantime, UCCC has begun developing a survey of the entire faculty about the Core, but it is unclear at this time as to whether the survey will focus on process (as previous FRPR surveys have done) or the content of the Core Goals. Given that UCCC is contemplating substantive changes to the language of the Goals (and changes to the nature of Goal 3), FRPR recommends that any survey concentrate on the language and purposes of the Goals themselves, rather than process.

APPENDIX ONE: Text for Brochure on Faculty Rights (revised 11/23/18)

Q: What rights do I have, as a KU faculty member?

A: The [Faculty Code of Rights, Responsibilities, and Conduct](#) outlines 16 rights guaranteed to all tenure-track *and* non-tenure-track faculty. Among these are:

- The right to impartial application of policies at dept., school, and Univ. levels
- The right to participate in determination of those policies
- The right to have a say in teaching and service assignments
- The right to see personnel files that contain information about them
- The right to be secure in their offices, papers, and computers
- The right to a written yearly evaluation
- The right to due process without retaliation.

Moreover, the list “should not be construed to disparage other rights retained by the faculty.”

Q: What responsibilities does the Faculty Code obligate me to?

A: It depends on your position, department/unit, and School/College. The Code states that the responsibility of faculty “are multiple and are not to be construed as limited to any specific list,” but typically involve some combination of teaching, research/professional activity, and service. Other responsibilities include:

- Being aware of federal and state law, Board of Regents and University policies, and regulations and complying with them
- Receiving prior approval from the Office of the Chancellor when distributing written or electronic materials for solicitation purposes
- Using technology in a responsible manner in accordance with guidelines and policies
- Adhering to “commonly accepted standards of professional ethics”
- Refraining from acts of moral turpitude

Q: If I don’t fulfill those responsibilities, what can happen to me?

A: There are several sanctions, “commensurate with the severity of the offense”:

- **Warning** against repetition of the offense within a period of time
- **Restitution** for damage or misappropriation
- **Censure**, a formal written reprimand
- **Suspension**, without pay, for up to two years
- **Dismissal**

Q: What can I do if I think that I have been unjustly sanctioned or that my rights have been violated?

A: Appeal to the Faculty Rights Board. There are three types of appeal:

☛ **If you are a tenure-track faculty member denied tenure or promotion**, you must prove **either** (a.) procedures were violated and prevented a fair hearing; **or** (b.) a recommendation at any level of review violated your academic freedom; **or** (c.) written standards were not applied. Send your written appeal to the [University Governance Office \(UGO\)](#) **within ten days of the first Friday in March.**

☛ **If you are a tenured faculty member who is being terminated**, the burden of proof is on the Provost to show that you are guilty of incompetence or moral turpitude. The case must go to mediation first; if that doesn’t work, file a written Answer to the Statement of Charges **within two weeks** to the UGO.

☛ For everything else, there is the **“Appeal from Administrative Action.”** This covers all non-tenure-related matters. It is the only appeal available to non-tenure-track faculty or untenured faculty prior to tenure review. File this appeal within **fourteen days** after the action. The burden is on you to prove that it **both** (a.) violated “established University procedures” **and** (b.) adversely affected faculty rights. Given the practically insuperable difficulty of meeting both these standards, and the fact that no such appeal ever has been successful, FRPR cannot advise faculty to file such an appeal except upon the advice of a competent attorney.

WARNING: The Office of General Counsel (GC) has no official role in the FRB appeals process. GC is the Administration's lawyer. Therefore, if you are filing any kind of appeal with the FRB, you are performing in an adversarial relationship with GC. You are under no obligation to meet with any representatives of GC or anyone else in the Administration, at any point in the process. Should you choose to do so, you have a right to have your own legal counsel present. Any such meeting is undertaken at your own risk. Likewise, this brochure is not intended to provide specific legal advice for any specific situation. Legal advice can be provided only in the course of an attorney-client relationship with reference to all the facts of a specific situation.

APPENDIX TWO: Statements relating to curricular control within governing documents at KU's peer institutions

Colorado

<http://www.cu.edu/faculty-council/constitution/article-i-definitions-and-principles>

Constitution:

I.B

The faculty takes the lead in decisions concerning selection of faculty, educational policy **related to teaching, curriculum**, research, academic ethics and other academic matters. The administration takes the lead in matters of internal operations and external relations of the university. [this is almost verbatim from the AAUP 1958 statement]

I.B.1

The faculty shall have the principal role **in the origination of academic policy and standards, including** initial authorization and direction of all courses, **curricula**, and degrees offered, admissions criteria, regulation of student academic conduct and activities, and determination of candidates for degrees.

Missouri

https://www.umsystem.edu/ums/rules/collected_rules/faculty/ch300/300.010_faculty_bylaws_umc

Faculty By-Laws:

C.3. Authority -- The faculty's authority, as delegated by the Board of Curators, is of three types: direct and primary, in which the faculty has essential decision-making authority; shared, in which the faculty participates with others; and advisory, in which the faculty counsels with the person or offices with ultimate decision-making authority. (On those matters requiring multi-campus coordination, the faculty shall act through its appropriate bodies, Section 300.010.F.)

Primary and Direct Authority -- **The UMC faculty has essential decision-making authority in matters directly affecting the educational program of UMC**, including but not limited to:

- (1) Articulation and maintenance of standards of academic performance -- this includes but is not limited to guidelines for appropriate research, service, and scholarships; requirements for graduation; and related matters.
- (2) **Construction and approval of courses of instruction and of curricula.**

Oregon

<https://senate.uoregon.edu/governance-2/constitution/>

University Constitution 1.3:

Sole faculty governance authority at the University of Oregon resides in the Statutory Faculty. This authority extends to all academic matters as commonly understood in higher education. The Statutory Faculty may delegate its authority but must retain oversight responsibility.

Indiana

<http://www.indiana.edu/~ufc/constitution.html>

Faculty Council Constitution:

Section 2.2: Legislative Authority

The faculty has legislative authority to establish policy and determine procedures for its implementation governing the teaching, research, and service aspects of the University's academic mission. **Areas within the faculty's legislative authority include:**

A. Academic mission . . .

E. Curriculum

Michigan State

<https://acadgov.msu.edu/bylaws>

Bylaws for Academic Governance (re: the “University Council”):

3.2.4.1

While the Faculty Senate may seek input from the University Council on proposals regarding **curricular issues**, faculty tenure and promotion issues, and faculty salary and benefits issues, the primary focus of discussion in the University Council is on other issues that are not **the core responsibility of the Faculty Senate**. [i.e., curricular issues *are* a core responsibility of the Faculty Senate]

3.3.4. Functions of the Faculty Senate 3.3.4.1.

The Faculty Senate is a deliberative, representative, and legislative body for Michigan State University faculty. As such, **the Faculty Senate is the major, regularly meeting body in which curricular issues**, faculty tenure and promotion issues, and faculty salary and benefits issues **are presented**.

4.5. UNIVERSITY COMMITTEE ON CURRICULUM

4.5.1.1. The UCC will report **to the Faculty Senate**.

4.5.3. The UCC shall exercise **the faculty’s delegated authority to review and approve or reject all changes in undergraduate curricula** and degree requirements . . . **and to review and approve or reject changes in graduate and graduate-professional curricula** and degree requirements

Buffalo

<http://www.buffalo.edu/facultysenate.html>

Charter of the Faculty Senate:

II.B.1.

b. Curriculum.

- i. **The Senate shall discharge the powers and duties of the Voting Faculty regarding undergraduate degree requirements and policies and procedures regarding undergraduate curricula.** These include, but are not limited to, educational requirements and other matters of academic policy common to the undergraduate programs of the University.
- ii. The Senate shall approve the appointment of faculty representatives to University-wide committees responsible for reviewing course and curriculum proposals for undergraduate programs.

UNC

<https://www.unc.edu/faculty/faccoun/code/code2010.shtml>

Faculty Code:

“Faculty Council”:

§ 2-8. Powers.

(a) **The Council exercises the legislative powers of the General Faculty:**

1. **to determine the educational policies of the University and the rules and regulations under which administrators and faculty will conduct the educational activities of the University;**
2. to prescribe the requirements for admissions, programs of study, and the award of academic degrees by the University in the context of the basic educational policies of the University and the special competencies of the faculties of particular colleges and schools;

UVA

<http://facultysenate.virginia.edu/content/about>

Constitution & By-Laws:

Purpose

The Faculty Senate represents all faculties of the University with respect to all academic functions

...

*

The Academic Affairs Committee “will be **responsible for all issues pertaining to matters of curricular . . . review**” <http://facultysenate.virginia.edu/committees/1>

Iowa

<https://uiowa.edu/facultysenate/bylaws-university-iowa-faculty-senate-and-council>

Bylaws:

3.3.7: Committee on Academic Values

(ii) **To counsel and advise Faculty Senate officers**, Senate committees, and potentially other university constituencies, **with regard to** proposed policies, **curricula**, programs, events, and other issues impacting or related to core academic values.

Florida

<http://senate.ufl.edu/>

University Constitution:

Article V. Section 3. THE [Faculty] SENATE POLICY COUNCILS. Five Senate Policy Councils are charged with making policy recommendations and facilitating faculty participation in shared governance in their assigned areas.

(A) The **Policy Councils** are:

(1) **Academic Policy: This council's area encompasses educational policy, including** the creation, modification, or deletion of academic programs and units; **curriculum**; academic standing; relationship of academic units to each other; general policies concerning student instruction; and academic merits of candidates for administrative positions of academic significance.

Kansas

<http://policy.ku.edu/governance/university-senate-code>

University Code:

2.5.2 . . . Affairs of the University which directly and primarily affect the faculty of the University include, but are not limited to, faculty rights, privilege, and responsibilities, research, scholarly publications, admission and transfer requirements, and credit for resident and non-resident study.

[No mention of curriculum anywhere in USRRs or FSRRs either.]

APPENDIX THREE: Procedures for Recommending Revisions to the KU Core
[from the UCCC's "Policies, Procedures, and Understandings"]

1. The agenda for each UCCC meeting is developed through consultation between the UCCC staff and the UCCC chair. UCCC members and members of the university community are welcome to suggest agenda items.
2. The agenda for each UCCC meeting is published before the meeting*; publication consists of sending the agenda to all members of the UCCC and posting the agenda on kucore.ku.edu.
3. Proposed wording of any revision to the KU Core must appear in the agenda. In consultation with UCCC members and the UCCC staff, the UCCC chair will attempt to identify and contact individuals or academic units that might have a particular interest in the proposed revision. The agenda will invite written comments on the proposed revision; such comments will be accepted until noon on the business day before the meeting.
4. At the meeting involving the first reading of the proposed revision, UCCC will provide an opportunity for individuals not on UCCC to make brief presentations regarding the proposed revision. At that meeting, UCCC will not vote on the proposed revision.
5. A subsequent meeting will involve a second reading of the proposed revision, which must again be published in the agenda, and distributed in the manner described above. The agenda will indicate whether a vote will be taken.
6. The final vote on a revision will take place at a second or subsequent reading of the proposed revision. The recommendation and vote will be forwarded to the Provost for final approval.

-- Adopted unanimously by UCCC, Fall 2012

* UCCC agendas, minutes, and members are available at: <http://kucore.ku.edu/2018-19-committee#>

APPENDIX FOUR: Letter from CLAS Ad Hoc Committee on the Core Curriculum

May 2, 2013

Dear Colleagues,

We're writing with some concerns about the impact of the emerging Core Curriculum on academic freedom at KU. As the full appointed membership of the CLAS Ad Hoc Committee on the Core curriculum, we have met often since October 2012 to review core course nominations, in the hope that we can help the College adapt successfully to the new expectations. In many respects this is going well. But as we've continued to meet, we've become concerned about the possible longer-term impact of the core curriculum in its implementation and assessment phases.

Specifically, we are concerned about the following potential pitfalls.

1. The core approval process establishes what are, in effect, contracts between the University and departments and instructors. Every course approved for the core curriculum is pledged to achieve a specific core outcome (or several such outcomes). The dilemma this poses, over time, is that instructors who teach these courses in the future may not wish to be bound by today's pledges. Faculty will be expected to teach in ways that may not correspond to their choices. This, we think, raises a problem concerning **academic freedom that we should address now, before it becomes a problem later**.

In some cases, departments could choose to relinquish a core designation, if they agree that the core expectations are no longer appropriate. But what if faculty and departmental decision-makers (chairs, etc.) disagree about whether to continue teaching these courses with pre-established core content? To what extent and under what conditions would the instructors have **freedom to teach these courses** – which may be their specialty areas – **without outside interference**?

2. All core courses will be assessed by the University to establish that they achieve the goals for which they have been approved. But what will happen if the reviewing committee disagrees with the way the course materials address the core curriculum? Will the reviewers be **authorized to require a different curricular approach**? Will instructors be **required to change the way they teach** the course or assess student achievement? Most importantly, will these constraints come **from people outside the discipline**?
3. This raises the question of whether departments should tailor their courses to outside expectations that emerge during the course of assessments. The academic freedom issues this raises strikes us as troubling. Departments will have a clear incentive to tailor their courses to outside expectations. Faculty will have an incentive to heed instructions from people outside their own department and discipline.

This is a slippery slope. We offer these comments, not to oppose the Core Curriculum, but to call attention to **the need for safeguards**. If we hope to ensure that KU's Core is ideally compatible with academic freedom, we will need well-wrought procedures (for assessment, appeal, and more) that take these concerns into consideration.

We urge the Faculty Senate and the University Senate to consider these issues.

Yours truly,

Ruth Ann Atchley, Department of Psychology

Robert S. Cohen, Department of Molecular Biosciences

Antha Cotten-Spreckelmeyer, Department of Humanities and Western Civilization

Scott Jenkins, Department of Philosophy

Clarence Lang, Department of African and African-American Studies

Judy Roitman, Department of Mathematics

David N. Smith, Department of Sociology

Maria Velasco, Department of Visual Art