

Faculty Rights Privileges and Responsibilities Committee
Fiscal Year 2016 (Academic year Fall 2015-Spring 2016)

Members

| | | |
|---|--|----------------|
| Chair: Kirk McClure, Urban Planning (2016) | mcclure@ku.edu | |
| Mary Banwart, Communications Studies (2018) | mbanwart@ku.edu | Faculty Senate |
| Sean Seyer, Humanities & Western Civ (2018) | seanseyer@ku.edu | |
| Dean Williams, Institute for Lifespan Studies, (2018) | deanwms@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 | |
| Laura Hines, Law (2016) | lhines@ku.edu | |

Charges

FY2016 FACULTY RIGHTS, PRIVILEGES AND RESPONSIBILITIES (FRPR)

Approved by FacEx: June 2, 2015

Approved by Faculty Senate: September 10, 2015

- For further information or to schedule a meeting with FacEx to discuss charges or the committee's work, contact FacEx Chair Tom Beisecker at south40@ku.edu.
- Minutes of each meeting should be e-mailed to the Governance Office (govern@ku.edu) as they are approved. The minutes will be posted to the Governance web site.
- If the committee is recommending a change to university policy or rules, FacEx must officially receive that recommendation by March 22, 2016 in order to meet timeline requirements for full review by Governance.
- Please send a report of the committee's actions on each of the charges, as well as any recommendations the committee wishes to make concerning charges or membership for the following academic year, to University Governance, at govern@ku.edu, and submit the final report by April 15, 2016.

Standing charges:

As circumstances require:

1. Monitor the implementation of university policies related to the rights and responsibilities of the faculty, including the following general areas (1) appointments, promotions, granting of tenure, and non-reappointments; (2) merit evaluations, rewards and sabbatical leaves; (3) protection of the faculty's right to privacy; and (4) intellectual property. Review all current policy statements regarding these matters to ensure that they are adequate, appropriate, and readily available to all faculty members. Report issues, problems, and recommendations to FacEx (ongoing).
2. Respond to inquiries and address issues regarding faculty rights, privileges, and responsibilities (as they arise).
3. Communicate with representatives of the AAUP regarding their concerns relating to faculty rights, privileges and responsibilities. Report issues, problems, and recommendations to FacEx (ongoing).

Specific charges:

1. Monitor the implementation of the KU Core Curriculum, including a follow-up survey. Report issues to FacEx.
2. Assess the relationship of University Core Curriculum Committee (UCCC) to Faculty Governance. Make recommendations if appropriate to ensure faculty have appropriate input in the development and supervision of academic requirements.
3. 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**.

University of Kansas Faculty Senate
Faculty Rights Privileges and Responsibilities (FRPR) Committee
Minutes of Committee Meeting October 1, 2015
33 Strong Hall, 3:30 pm to 4:30 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 & Western Civ (2018) | seanseyer@ku.edu | |
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| 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 |
|-------------------------|--|

Professor Tom Beisecker, Faculty Senate President, attended the meeting. He thanked the members of the FRPR Committee for agreeing to serve and told the members that the Faculty Executive Committee (FacEx) needs their help.

The Faculty Code of Rights, Responsibilities and Conduct (FCRRC)

The FCRRC, as passed by the Faculty Senate on April 16, 2015, has been edited by the administration. FacEx would like guidance from FRPR on responses to the changes proposed by the administration.

Beisecker stated that FacEx would like FRPR to report back by November 1 so that the guidance could be discussed at the December FacEx meeting.

Beisecker indicated that the issue of leave without pay remains contentious. The administration feels that if: 1.) A faculty action endangers the safety of students, or 2.) A faculty members abandons teaching a class, that the administration should have the authority to impose leave without pay. If leave without pay is imposed, it would trigger other hearing procedures and should be short-term. It remains unclear why stopping pay is crucial to the administration.

The Core Curriculum

Beisecker asked FRPR to update the survey that it conducted last year on the implementation of the Core Curriculum. He indicated that the administration would like to work with FRPR on the survey.

Beisecker asked FRPR to address the organizational position of the University Core Curriculum Committee (UCCC) within the University. He stated that all faculty committees that establish curricula or graduation requirements report to some faculty body. The UCCC does not report to a faculty body. The administration argues that the UCCC represents all schools and does not need to report of a faculty body. Beisecker asks FRPR whether the UCCC should report to the Faculty Senate.

Applied English Center (AEC) Master Accelerator Program

Beisecker indicated that FRPR would be asked to provide input on the AEC accelerator program which moves students with limited English language skills into various programs.

Conflict of Interest

Beisecker asked FRPR to return to the issue of Conflict of Interest. FRPR should provide FacEx with input on how to standardize language in various rules and regulations so as to prevent Conflict of Interest by members of various committees.

Beisecker thanked the FRPR Committee members again and left the meeting.

The Faculty Code of Rights, Responsibilities and Conduct (FCRRC)

The Committee discussed substantive problems with the revisions to the FCRRC proposed by the administration.

McClure noted that administration had proposed to make faculty rights subject to University Policy which could be imposed by the Provost. He noted that administration removed the faculty right to be informed about personnel files kept on the faculty member.

Hale noted that the administration proposed to demote the faculty right to due process to simply the ability to appeal a decision.

Future Steps for FRPR

McClure asked members of FRPR to review the version of the FCRRRC approved by the Faculty Senate as well as the revisions proposed by the Administration. Each member should list issues and circulate those to the other members via email. The Committee will attempt to form a single list of the member's concerns for delivery to FacEx.

The difficulty of scheduling may make it impossible to arrange for a meeting with a all members of FRPR present. An effort will be made to schedule such a meeting via an email poll. If a meeting data cannot be found, the review of the FCRRRC will be finalized through email exchanges to the entire membership.

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 & Western Civ (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:

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| 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, I could not find many references

to university policy, but you can see the one example in my 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

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

Members attending

| | |
|---|--|
| Chair: Kirk McClure, Urban Planning (2016) | mccclure@ku.edu |
| Sean Seyer, Humanities (2018) | seanseyer@ku.edu |
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| Laura Hines, Law (2016) | lhines@ku.edu | |
| Amalia Monroe-Gulick, Libraries, (2016) | almonroe@ku.edu | Faculty Senate / FACEX |

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**.

- b. 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.

- d. 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 and 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 to 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**

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.

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.

University of Kansas Faculty Senate

Faculty Rights Privileges and Responsibilities (FRPR) Committee

The Committee met through email message exchange to discuss the Survey to Assess Faculty Opinion on the Common Core

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Amalia Monroe-Gulick took the lead to conduct a follow-up survey of the faculty to gauge opinion on the implementation of the Common Core. FRPR conducted a survey during the Spring Semester of 2015 on the same topic. FRPR was charged with monitoring the implementation of the Common Core. The decision was made to conduct the survey in substantially same form so as to assess what, if any, changes there has been in faculty opinion.

The survey is being conducted now, mid-April, 2016. The results will be reported to the Faculty Senate Executive Committee.

University of Kansas Faculty Senate
Faculty Rights Privileges and Responsibilities (FRPR) Committee

Additional activities:

Member Rick Hale chaired a special committee to hear the charges of scholarly misconduct filed against a member of the KU faculty.

FRPR Chair Kirk McClure observed the actions of the special committee to ensure that the rights accused faculty member were protected during the hearing.

Professor Hale suggests that FACEX should consider asking FRPR to study the issues associated with charges of scholarly misconduct.

When the charges are filed by a person external to the University, it is necessary to balance the rights of faculty to directly face their accusers versus the institutional risks of releasing personnel-related material. Normal procedures followed during such hearings provide for discovery of evidence, much of which is confidential in nature. Should such confidential information be released to persons outside the University?

The current code, and specifically USRR Article 9.1.7, offers no protections for well-intentioned colleagues who serve on such committees, since external persons are not limited in retaliation.