

Senate Rules and Elections Committee

February 14, 2014

Minutes

Jones (Chair, Brion, Grossman, Pienkowski, Wood

The Senate Rules and Elections Committee met and discussed the following issues.

1. The SREC reaffirmed its recent interpretation that the last paragraph of Senate Rule 5.2.4.2 on excused absences means that an Instructor can either force a student to withdraw from a course or force a student to receive an I grade for the course, and that this rule takes precedence over any policy description in the University Bulletin that may appear to the contrary. The SREC does view that the language of this Senate Rule paragraph is unnecessarily confusing in relation to other Senate Rules on assignment of grades. **The SREC recommends that the Senate Council approve for submission to the University Senate the following amendment to this rule**

If attendance is required by the class policies elaborated in the syllabus or serves as a criterion for a grade in a course, and if a student has excused absences in excess of one-fifth of the class contact hours for that course, ~~a student shall have the right to petition for a "W", and the then the~~ Instructor of Record may ~~require direct the dean to impose a W for the course. the A~~ student ~~always may to~~ petition ~~to the dean~~ for a "W" or ~~request the Instructor take to assign~~ an "I" ~~in the course~~.

The SREC also noted that the Student Affairs web site currently links to an obsolete (2009) version of the Senate Rules. The SREC also suggest that it might be helpful if the University Senate web site not only posted the Senate Rules as a whole, but also divided as separate sections I, II, III, etc.

2. The SREC discussed a need to clarify the current University Senate Rule on cross-listed courses. The current rule does not specifically address situations in which the 'home' educational unit of a course wants to drop the course from the list of courses for which that home unit is responsible. A home unit is responsible for both the academic content of a course, for initiating changes to the course, and for resource support for the course. It happens that a home unit wants to cease being the home unit for a course, but a cross-listing unit would like to 'take ownership' of the course. In order to make the Senate Rules clear on the process by which a cross-listing unit becomes the home unit for a course, the SREC decided to submit to the Senate Council a recommendation that the following new provisions be added to the Senate Rules.

SR 3.3.2

E. Cross-listing

1. If an educational unit Faculty wishes to cross-list an existing course, then it shall first seek the approval of the Faculty of the educational unit that currently offers the course. If each Faculty of the two units approves the cross-listing (which shall be attested to by each unit chair/director in the proposal documentation), then the requesting educational unit shall submit a form for a minor course change of the existing course. If the units are in different colleges, both deans must signify approval in the similar respective capacities as described above for the two unit chair(s)/director(s). Cross-listing shall not be used as justification for duplication of teaching effort. The chair of the home educational unit of the course must agree on the time, place and instructor(s) in scheduling of the cross-listed course.

2. If both the home educational unit and cross-listing educational unit request, and their respective college faculty mechanisms approve, then the cross-listing unit may become the home unit by exercise of the course minor change approval process, including change of the course prefix to reflect the new home unit (SR 3.3.2.G).

However, if the cross-listing unit wants to cause at the same time more than minor change to the content of the course, then the change in home unit for the course and change in course content shall be submitted through the regular course change process. (SR 3.3.2.A-D).

The SREC recognizes that there may also be situations in which the home unit that originally agreed that a second unit cross-list the course no longer wants the course to be cross-listed to that second unit, but the second unit wants to retain cross-listing. **The Senate Rules do not directly address this situation, and the SREC recommends that the Senate Council discuss what ought to be the procedural handling of such a situation.**

3. The SREC discussed at length with Associate General Counsel Marcy Deaton the meaning of GR XI on the relationship of the UAB to the University Senate Rules. The SREC noted previous actions by the Board of Trustees to designate the University Senate as the “university-wide faculty governing body”, and to identify the University Senate as the “legislative body” of the University. The SREC emphasized its understanding that the UAB’s “original jurisdiction” means that it can hold a hearing to newly determine facts, and it can use those newly determined facts to decide whether there has been an academic offense by the student (GR XI.C.2.a) or whether there has been a violation of student academic rights (GR XI.C.4). The SREC understands GR XI.G to mean that when the UAB is determining the dispositional penalty or remedy, it is bound by the parameters for penalty or remedy established by the University Senate Rules.

“The authority of the UAB over the disposition of academic cases is provided in the University Senate Rules for academic cases and in the Code of Student Conduct for non-academic cases. Decisions of the UAB are final.” GR XI.G

The discussion reviewed a previous email from Associate General Counsel T. Lynn Williamson that supports the above understanding of the SREC. That email stated in part,

“It seems to us that there [is] one valid, legal concern over the matter of the Senate's restricting the UAB's jurisdiction. If the Senate's rules on the jurisdiction of the UAB are too restrictive, the University might loose [sic] a challenge where the opponent argues that the Senate's rules basically eliminate due process. One might argue that, if there is an appellate process, but its jurisdiction is so restrictive that there can be no decision except the one that has already been made, then there is no due process. I am not convinced that specifying that penalties can only be reduced is so restrictive [as] to basically eliminate due process.

Again, we think that legally the Senate may pass rules to restrict jurisdiction of the UAB.”

Deaton expressed that her opinion is similar to that of the SREC and Williamson.

The SREC described its understanding that under GR XI and its interpretation of the Senate Rules, in cases of academic offenses, the UAB does not have the authority to impose a penalty more severe than delimited by the Senate Rules, nor to direct that a letter of warning not be placed in the student's record when the Senate Rules expressly require it. In addition, the SREC discussed that in cases of academic rights, the UAB is not authorized to direct that a grade be changed without the UAB first making a determination that it has been “proved” that the grade rendered by the Instructor was “based upon anything other than a good-faith judgment.” Deaton expressed her impression that the SREC's interpretation on these examples is correct.

The SREC discussed what option is available to the UAB if the UAB feels that the limiting parameters of penalty or remedy in the Senate Rules are not appropriate. The SREC noted that under GR III.A.6, the President can, under “extraordinary circumstances,” waive a Senate Rule, and could if persuaded by the UAB of “extraordinary circumstances” waive the Senate Rule that limits the range of penalty or remedy.

“Under **extraordinary circumstances**, and with **written justification** to the University Senate through the University Senate Council, the President may suspend a rule of the University Senate in a particular case; however, under no circumstance may the President suspend rules concerning admission and the number of credits and quality points required for graduation.”

The SREC is not aware of any case, subsequent to promulgation in 1943 of the above GR III.A.6, in which the President had found such extraordinary circumstance to waive a Senate Rule, and certainly since June 2005 (when the “written justification” clause was added), the University Senate Council has never received a “written justification” from the President for waiver of any Senate Rule.

There was additional discussion on who is responsible for overseeing that the UAB is performing its functions in accordance with applicable rules and regulations of the University. The question was posed to Deaton as to whether the UAB 'is a part of University operations' within the meaning that the University President 'is responsible for University operations.' Deaton expressed that it was her impression that it was.

Both the SREC and Deaton agreed that GR XI needs to be made more clear. In addition, all agreed that the UAB is free to suggest to the University Senate the merits of changing the range of penalties (or remedies) in the Senate Rules for particular academic offenses (or particular violations of academic rights). The SREC suggested, and Deaton endorsed, that the SREC would submit to the General Counsel of the University specific questions relating to the above discussion, upon which the General Counsel could render specific responses with copy to the President and the chair of the UAB.

The SREC identified the following questions for submission to the General Counsel of the University:

1. The Senate Rules prescribe that if a student commits an academic offense (as determined by the instructor and, if the student appeals his or her guilt, the University Appeals Board), and there is no record of a prior offense, and the recommended penalty is no more severe than an E in the course, then a letter of warning goes into the student's record at the Registrar's Office. The purpose of the letter is so that if the student commits an academic offense again, the appropriate University authorities can be made aware of the existence of the prior offense.
 - a. Under the above circumstances, does the UAB have the discretion to instruct the Registrar not to keep a letter of warning in the student's record?
 - b. Would a UAB instruction to the Registrar to not maintain the letter of warning in the student's record be a violation of federal record-keeping rules (that expect student records to be maintained in their designated files)?
2. The Senate Rules prescribe that the UAB can reduce the severity of the penalty that an instructor originally imposed for an academic offense, but it cannot increase it, regardless of whether the student is appealing the finding of an offense or the severity of the penalty.
 - a. If a student appeals the finding of the academic offense to the UAB, and the UAB finds that the student did indeed commit that offense, does the UAB have the authority to impose a penalty more severe than the instructor originally assigned?

- b. If the student does not appeal the finding of the offense, but just the severity of the penalty assigned by the instructor, does the UAB have the authority to impose a penalty more severe than the instructor originally assigned?

3. The Senate Rules prescribe a minimum penalty of zero on an assignment for a first academic offense, an E in the course for a second offense (if the first offense received a penalty less than an E in the course; otherwise the minimum penalty is suspension), and suspension for one semester for a third offense.

- a. Is it permissible for the Senate Rules to specify minimum penalties of increased severity for first, second, and third offenses?
- b. Is it permissible for the Senate Rules not to allow a student to appeal an imposed penalty if it is the minimum specified penalty for that kind of offense? (This question assumes that the student is not appealing guilt.)
- c. If a student appeals the finding of an academic offense to the UAB, and the UAB finds that the student did indeed commit that offense, does the UAB have the authority to impose a penalty less severe than the minimum prescribed by the Senate Rules?
- d. If the student does not appeal the finding of the offense, but just the severity of the penalty assigned by the instructor, does the UAB have the authority to impose a penalty less severe than the minimum prescribed by the Senate Rules? (This question is for cases in which the imposed penalty is greater than the minimum penalty.)

(We are referring in questions 2–3 to academic offenses that a student commits in a course in which he or she is enrolled. If a student commits an academic offense outside of a course, the minimum penalty that can be imposed is suspension, but the authorities designated in the Senate Rules have discretion not to impose this very harsh penalty if they do not think that the nature of the offense warrants it.)

4. The Senate Rules prescribe that if a student appeals a grade that was assigned by an instructor in a course, then the UAB can order the grade to be changed only if the UAB finds that it has been “proved” that the grade was based on anything other than “good-faith judgment.” Can the UAB order an instructor to change a student’s grade if the UAB does not first make this finding?

All of the above questions assume that the UAB has not asked the President to waive the particular Senate Rule in question.

4. The SREC discussed an issue relating to several course proposals in relation to the GCCR. The SREC interpreted that under the unique circumstances, these course proposals could proceed and later be assessed in relation to GCCR.