

Senate Council
March 11, 2015

The Senate Council met in special session on Wednesday, March 11, 2015 at 3 pm in 103 Main Building. Below is a record of what transpired. All votes were taken via a show of hands unless indicated otherwise.

Senate Council Chair Andrew Hippisley called the Senate Council (SC) meeting to order at 3:01 pm.

1. Old Business

a. Next Steps for Report from Ad Hoc Committee on Faculty Disciplinary Action

The Chair explained that the plan for the day involved discussing the changes to the proposed new *Governing Regulation (GR)* on faculty disciplinary action, made by a variety of faculty from the SC, from the ad hoc Committee on Faculty Disciplinary Action (Committee), from the Senate, and from other faculty. The Chair said that Watt, the chair of the Committee, would present the revisions to SC, after which SC would vote on the change. Subsequent to any vote approving a particular change, the Chair would then solicit a motion from the SC to determine if the SC thought the change to be of such critical importance that it was unwilling to be flexible.

Watt said that the version under discussion was the eleventh revision and apologized for the number of recent changes. He said that his plan was to work through the tough issues and suggested that SC members with trivial concerns and requests for editorial changes email him after the meeting. Watt said that he had spent a significant amount of time with General Counsel Bill Thro and would let SC members know if any of the proposed changes was likely to be contentious from the perspective of Legal Counsel. Watt said there were eleven substantive issues he wished to raise with SC members, although there were number of smaller changes in the document that were more editorial in nature. Watt opined that if the SC was determined to propose something that Watt felt would not be accepted by Legal Counsel, there would be no point in taking the proposed GR to the University Senate (Senate). If that situation occurred, Watt opined that the best course of action would be for the Committee to report to the Senate on the work it had done. At that point, if President Eli Capilouto opts to put the disciplinary action language into an *Administrative Regulation*, it will be the President's prerogative to do so.

Wilson asked about the need for the proposed *GR* to be given to the Staff Senate and Student Government Association for their review, which is standard for new *GRs*. There was brief discussion about this matter, but Watt asked SC members to remain focused on the specific language in the proposed *GR*.

Section I, Introduction

Watt explained the added language and deleted language. SC members did not object to either the stricken or deleted language. Porter suggested rewording the sentence on professional and unprofessional conduct because unprofessional conduct is defined as behavior that is not professional; he thought the wording could be improved.

Watt **moved** that the SC accept these edits and Porter **seconded**. A **vote** was taken and the motion **passed** with none opposed.

SC members and the members of the Committee discussed the appropriateness of the "flexible/inflexible" votes. The SC ultimately decided to hold votes on the edits made since the March 2

SC meeting and direct the Chair and Watt to meet with General Counsel Thro to discuss the changes with him. After Watt and the Chair report back to the SC, further decisions can be made about compromising.

Blonder asked for additional information about what “constitutional rights” meant or implied in the last paragraph of Section 1. Watt replied that he was unsure as to the rationale for the language, but would check with Counsel Thro.

Section II, Scope

Watt said that no substantive changes were made to this section. Blonder advocated for adding “librarians” to the list, but others thought the introductory sentence was sufficiently broad to cover the Librarian Title Series.

Watt explained that the new language in the third paragraph (“This regulation is separate and distinct from...clinical rights and clinical responsibilities...federally mandated Title IX Sexual Assault procedures.”) was intended to show that the proposed new *GR* is intended to cover situations that do not impinge upon or affect clinical privileges. In essence the language differentiates between the rights of faculty versus hospital privileges. There was some concern that the language was not clear about its intent, but there were no objections to the philosophical idea behind the sentence.

Section III, Entities Affected

There were no revisions to this section.

Section IV, Procedures

Watt said that the sentence in the second paragraph of “B. University Investigation” was intended to prevent an administrator (chair, dean, etc.) from using the disciplinary process to essentially harass a faculty member who they consider to be a thorn in their side. Watt said he received a suggestion to add “vindictive and/or baseless” but he did not think the added language was particularly helpful. Grossman suggested editing the “trivial, vindictive and/or baseless” sentence (something like ‘any person who has evidence of or suspects unprofessional conduct by a faculty member’) and also moving it to Part A of Section IV, so that it falls under the heading of “Allegations.”

Watt explained that Thro and the President want to be sure anyone in the community can make a complaint, hence the broad language about who can make an allegation. Blonder suggested requiring the report to be written, but Watt explained that there are currently hotlines people can call to make reports, so verbal reports also need to be accepted. Guest Marcy Deaton, associate legal counsel, explained that three specific areas currently receive information from hotline calls: Corporate Compliance; Human Resources; and Legal Counsel.

There was lengthy discussion about what wording could be used instead of “trivial, vindictive and/or baseless.” Bailey asked if every allegation would be reported to Legal Counsel; Watt opined that some transgressions, such as smoking in one’s office, would probably not rise to the level of needing Legal Counsel input, but that it was not clear regarding when a report needed to go all the way up the chain of command and when a report could be taken care of at the departmental or college level.

Grossman **moved** to revise the first sentence of *Section IV.A* (“Procedures,” “Allegations”). There was brief discussion and Grossman **withdrew** his motion. After additional discussion, Grossman **moved** to amend the “trivial, vindictive and/or baseless” sentence to one with better wording [below]¹.

~~Trivial, vindictive and/or baseless –~~ Allegations against a faculty member made other than in good faith, particularly by a member of the University community, may rise to the level of harassment and bring the Complainant under scrutiny as delineated in these regulations.

McCormick **seconded**. There being no further discussion about the sentence, a **vote** was taken and the motion **passed** with none opposed.

Moving to the next area of the document, Watt said that some revisions were made to the list of possible sanctions in *Section IV.C.3*, specifically removal from an endowed chair or professorship position. In addition, Watt said the sentence about suspension was also added to better describe what suspension entails. Guest Connie Wood (AS/Statistics), who was a member of the ad hoc Committee on Faculty Disciplinary Action, said that the intent was to be sure that different types of suspension, such as suspension from teaching and suspension from research responsibilities, were treated individual and appropriately.

Grossman referred to the comments submitted by a senator about the proposed *GR*; the senator recommended adding language to ensure the sanctions are commensurate to the offense. Grossman opined that such language would be helpful and ought to be added. Grossman **moved** to add t to the end of the section defining suspension the following sentence: “The sanctions should be commensurate to the offense.” Mazur **seconded**. There being no further discussion about this sentence, a **vote** was taken and the motion **passed** with none opposed.

Blonder pointed out that there was a possible problem of timing regarding time periods within which action must be taken – in one instance, a dean must schedule a meeting with the faculty member within 21 days of notification, but a previous paragraph gives the faculty member seven days in which to give a written response. Blonder expressed concern that a dean could call a meeting prior to receipt of the written response. Watt said he would check the document to be sure time frames did not overlap. Guest Liz Debski (AS/Biology), who was a member of the ad hoc Committee on Faculty Disciplinary Action, said that oral notice should not be sufficient – verbal communication was too open to misinterpretation, so written notification should be the standard.

Watt noted that a significant addition was made to the end of *Section IV.E.1*; it involved slight modifications in procedure for chairs, deans, and individuals above the level of the dean, including the positions of president and provost.

Blonder asked that *Section IV.D.2* include language that requires the identified faculty to be available to serve on an inquiry panel and hearing panel. There was discussion about adding language that guarantees a diverse pool, but ultimately there was consensus around the idea that it will simply be the responsibility of the SC to be sure to send a diverse pool of SC-approved

¹ Strikethrough denotes deleted text; underlining denotes added text.

nominees to the President. In response to Porter, Wood commented that the purpose was to ensure a random procedure is used so that every person in the pool is equally likely to be chosen.

Moving back to *Section IV.E.1*, Watt said that the composition of the inquiry panel will change if the accused is a department chair, a dean, or above. The change is to involve more faculty in the panels. Wood added that the new language first explains how to deal with allegations against a department chair or dean, then the language addresses someone in an administrative position above the dean level, and the last sentence deals with allegations against the person who serves as president. Kraemer commented that the upper-level administrators have something more akin to a jury by their peers (additional members on the panels) but that rank-and-file faculty will not have a pool of peers – the faculty member will be judged by one peer and two administrators. Watt explained that the two administrators (representatives from Human Resources and from the Provost's office) are there to ensure parity of disciplinary action for faculty and staff, as well as to ensure parity of disciplinary action across colleges. Watt commented that he believed Thro would not be willing to change that composition.

There was extensive discussion about the composition of the inquiry panel and hearing panel, specifically the number of faculty on the panels. Wilson opined that the gist of the problem related to trust, and if there is one faculty member, compared to two administrators, it should not be called a faculty inquiry panel. Wilson opined that this would be the ideal place for an employee ombud to play a role, if UK had one.

Wilson **moved** that the SC express its support of the proposed added language in *Section IV.E.1* (about panel compositions for those above the level of rank-and-file faculty). Porter **seconded**. A **vote** was taken and the motion **passed** with none opposed.

The Chair called for a brief break about 4:20 pm. The meeting reconvened about 4:25 pm.

Watt said that there was one last substantive change to *Section IV*, in *F.9*. Watt said that the language as amended removes the opportunity for a dean to appeal to the President if the hearing panel finds the faculty member not guilty of unprofessional conduct. Watt noted that Thro would likely oppose this revision. No one present spoke against the revision.

Watt **moved** that the SC approve the removal of the ability for a dean to appeal the inquiry panel's decision and Wilson **seconded**. A **vote** was taken and the motion **passed** with none opposed.

Watt noted that the language in *Section VI* about requiring Board of Trustees (Board) approval for involuntary leaves of absence was symmetrical to the existing requirement that voluntary leaves of absence must also be approved by the Board. In response to Grossman, Watt said that it was his expectation that if the Senate's Advisory Committee on Privilege and Tenure was involved, that involvement would probably occur prior to implementation of any sanctions. Watt noted that the language was purposely broad so it would accommodate multiple situations, including ones in which a faculty member must be removed from campus in situations such as threatening violence, etc. Watt thought that leaving it up to good judgment was most appropriate.

Watt thanked the ad hoc committee for all the time and effort that went into the proposed new *GR*. Given that all the substantive issues were discussed, Watt said he would like to have an open discussion on the proposed new *GR*. Wood said that there was a discrepancy between a de novo review in *G.2* and dismissal of charges in *F.9*.

Grossman asked about the intent of “conclusions of law de novo” in *Section IV.G.2*, but no one was able to explain the purpose of that phrase. Deaton commented that a judge can determine which documents and witnesses are compelling and which are not. Deaton opined that the language probably meant that the President would use his discretion when reviewing evidence. There was extensive discussion about the language and that it would probably not be understandable to the average faculty member.

Wilson asked and received confirmation that the edited language reviewed during the day’s meeting allowed only for a faculty member to appeal and not for an administrator to appeal. Pienkowski asked about the removal of the standard of “a preponderance of evidence” in *Section IV.f.6*, which was replaced with “clear and convincing evidence.” Watt said that “preponderance of evidence” was a lower bar than “clear and convincing evidence.” Pienkowski asked why the higher bar was not used because a possible sanction would be revocation of tenure. Deaton noted that once a situation approached the possibility of revoking tenure, *Governing Regulations X* would apply. There was brief discussion about this language. In response to Pienkowski, Watt said he did not think Thro would approve of the change.

Mazur **moved** to accept the substitution of “clear and convincing evidence” for the previous “preponderance of evidence” statement. McCormick **seconded**. A **vote** was taken and the motion **passed** with none opposed.

The Chair asked if there were any further comments from SC member or from ad hoc committee members, but there were none. Those present thanked Watt and the ad hoc committee members for all their work. Watt requested that the Chair accompany him [Watt] to the meeting with General Counsel Thro to discuss the revisions voted upon by SC to the draft GR document. Specially Watt asked that the Chair accompany him ‘as a witness’ and to support the ‘position of the Senate Council’ on the draft document. This collaborative and supportive approach from SC to support the agreed upon revisions and the work of the ad hoc Committee is needed to have an accurate and complete compilation of the work of the SC on this matter.

Watt also asked for careful and professional discretion from SC members on the document draft revisions so that negotiations with Thro might proceed in a clear and uncontaminated process.

The Chair noted that an unrelated item had come up earlier in the day – Associate Provost for Undergraduate Education Ben Withers requested a change to the deadline for submission of midterm grades, as outlined in *Senate Rules 6.1.3.A*, due to the recent snow closings. The change would allow faculty to submit their grades through midnight on Monday, instead of requiring the grades to be entered by Friday at midnight. The Chair said that he had the authority to waive the pertinent *Senate Rule* on his own, but because the SC was meeting he opted to have the body make the decision on behalf of the Senate.

Wilson **moved** to extend the deadline until Monday, due to the recent snow days and Mazur **seconded**. A **vote** was taken and the motion **passed** with none opposed.

The Chair thanked Watt and his committee members and said he would report back after he and Watt met with Thro.

Porter **moved** to adjourn and Kraemer **seconded**. A **vote** was taken and the motion **passed** with none opposed. The meeting was adjourned at 4:43 pm.

Respectfully submitted by Andrew Hippisley,
Senate Council Chair

| SC members present: Bailey, Blonder, Brown, Grossman, Hippisley, Kraemer, McCormick, Mazur, Porter, Watt, and Wilson.

Invited guests present: Marcy Deaton, Liz Debski, David Pienkowski, and Connie Wood.

Prepared by Sheila Brothers on Thursday, March 19, 2015.