

University of Puget Sound
Faculty Meeting Minutes
April 17, 2007

1. In President Thomas's absence, Academic Vice President and Dean of Faculty Kristine Bartanen called the meeting to order at 4:03 p.m. By 4:15 p.m., 34 voting members of the faculty were present.
2. We approved the minutes of the March 20, 2007 faculty meeting as posted.
3. In response to Dean Bartanen's call for announcements, Barbara Warren reported she had just received her final check from State Farm insurance to cover losses she sustained in New Orleans as the result of Hurricane Katrina. This positive report was greeted by a round of applause.
4. There was no President's Report.
5. There was no Academic Vice President's Report.
6. Faculty Senate Chair Barry Anton reported that he had sent an email message of condolence to the chair of the faculty senate at Virginia Tech, which yesterday (Monday, April 16, 2007) suffered 33 dead at the hands of a mass murderer.

Chair Anton asked faculty senator John Hanson to provide an update on the current senate elections. Hanson reported that we have so far experienced good voting turnout in the election, which closes at 5:00 p.m. tomorrow. He said this election would be followed by a runoff election as required by the faculty bylaws, because of the large number of candidates. Keith Ward thanked the senate for setting up electronic voting procedures. He said he appreciated being able to vote last year while on sabbatical in Germany. Hanson reminded us that this was only our second year of electronic voting, and said that some faculty have expressed concerns about the security of their votes. Hanson said the current electronic voting procedure is only a provisional method of voting, and that it would be reviewed. Hanson invited us to let him know of any concerns we may have, and said he would be reporting to the senate based on his experience.

Bob Matthews asked how our university has responded to the Virginia Tech incident. Dean Bartanen noted President Thomas's email message to the campus earlier this afternoon that described our response. She said that, as President Thomas had reported in his message, our response includes an interfaith vigil of remembrance to be held in Kilworth Chapel tomorrow evening, the availability of counseling services, outreach to our students from Virginia, information posted on our web site and on the parents' web site with links to our crisis response plans, residence halls that are locked 24/7, and a professional security staff on duty 24/7.

7. Dean Bartanen introduced Paula Lehmann, an attorney from Davis Wright Tremaine in Seattle, specializing in the area of employment law. Ms. Lehmann was here today as the result of the recommendation from last year's Ad Hoc Committee on Faculty Evaluation that faculty might benefit from an overview of legal issues that might arise from writing letters of support, in particular as the result of our eliminating in 1994 "personal and professional characteristics" from the list of Faculty Code criteria to be considered for evaluation.

Ms. Lehmann explained that, as a specialist in employment law, she provides advice and counsel to employers, including the University of Puget Sound, about good practices to avoid litigation. She said that individuals, as well as the institution, have exposure "when things don't go well." She said the primary area to be aware of is defamation, but there are additional possible claims including public disclosure of private facts. In writing letters or in providing verbal comments there is a privilege that attaches to defamation claims that may be lost if the comments are not job related. She advised us to be sure to link comments to specific criteria outlined in the Faculty Code, because we may lose our "qualified privilege" if we stray from these. She explained that "absolute privilege" is a protection you have no matter what, while "qualified privilege" is something you start with but may lose based on something you do. She said that in Washington State it is a misdemeanor to provide false information in order to adversely affect someone's job.

David Droge asked to what extent faculty are protected by academic freedom when writing evaluation letters about one another's work. Ms. Lehmann responded that she wouldn't use the term "academic freedom" in this legal context, but in general giving an opinion based on your professional judgment probably would not be considered defamation, but that "you want to position yourself well against a potential claim."

Heidi Orloff asked what the legal implications were of someone putting facts in a file that are not true. Ms. Lehmann responded that you may be okay if it is done in good faith; that defamation is based on intent as well as whether the information is false.

Ms. Lehmann explained that another action to avoid is a claim of discrimination. She said that in Washington State individual employers do have exposure. Information in a letter that forms the basis of a discriminatory decision "could put you at risk." She said "it doesn't take much to trigger a claim of perceived discrimination," and that disability discrimination and gender discrimination are examples of areas where it is easy to get into trouble. For example, comments like "takes a lot of time off and is sick a lot," or "this person is out a lot because of problems with his or her kids" could get you into trouble if you cannot show the job related nature of the comments.

Jim McCullough asked what our liability is as individual faculty members if someone sues us based on what we've written. "Will the university defend us?" he asked. Ms. Lehmann responded that typically an employer will provide the defense in such a situation, if there has not been wrongdoing on the part of the individual faculty member. Dean Bartanen said that her understanding was that that is the way it works at Puget Sound; that we have liability insurance extending to these kinds of claims.

Suzanne Barnett said she was under the impression that “we left professional characteristics in” (the Faculty Code) when we eliminated “personal characteristics” in 1994. Dean Bartanen reported that the current Faculty Code does not contain the phrase “personal and professional characteristics.” Ms. Lehmann said we have “wide latitude” in commenting on professional characteristics that are formal Code criteria for advancement, such as teaching, publications, and university service. She said the “litmus test” to apply is, “is this job related?”

Ted Taranovski asked for a definition of defamation. Ms. Lehmann said that defamation is a term that includes both libel (written) and slander (verbal). Taranovski asked for a definition of what is job related. He noted that not showing up to teach is definitely job related, but that Ms. Lehmann had mentioned that commenting on missing work could get us in trouble. Ms. Lehmann responded that being absent a lot is relevant and job related, but that speculation as to why the person is absent is not. The problem is that the person is missing work, and the goal is to “tease out exactly what the work related problem is.”

Alexa Tullis asked whether, when describing a colleague in a letter, one should describe exactly what they do specifically, rather than saying that they are “collegial” or that they are “a team player.” Ms. Lehmann responded that “the more you are specific and concrete the better off you are in terms of exposure to claims.” She pointed out that the fact that “personal characteristics” was at one time in the Faculty Code and that we then took it out is especially significant and that, as a result, we need to be especially careful. She said that a good lawyer would take the old and new Faculty Codes and ask you to justify every single statement in your letter based on your adherence to the criteria and the differences between the two Codes.

Bill Breitenbach pointed out that in 1994 we also eliminated the phrase “to make the faculty member an effective member of the university for the balance of the faculty member’s career” that followed “personal and professional characteristics.” He argued that the effort of trying to estimate future performance was also something we were trying to remove. Ms. Lehmann agreed that it is good not to engage in speculation outside the facts.

Doug Cannon wondered about making observations about patterns of exaggeration in someone’s file. “Is this dangerous?” he asked. Ms. Lehmann responded that if the facts can be readily demonstrated then it is okay to point them out, but that generalizing from them can be risky. Cannon asked if one would be better off actually listing the minor exaggerations that exist in a file, with the implication being that in the aggregate they might be worrisome although in isolation each one is inconsequential as a misrepresentation of professional achievement. Ms. Lehmann agreed that, so long as the statements are job related, others may draw whatever conclusions they wish to draw.

Orloff asked how young faculty can protect themselves if they don’t know what’s in letters contained in a closed file. Dean Bartanen pointed out that all files, including tenure files, can be elected to be open or closed by the candidate him or herself, and that if a file is closed the candidate receives a summary of the letters from the Faculty Advancement Committee. Ms. Lehmann pointed out that even if a file is closed, all of the letters will come out in civil

litigation; that they cannot be shielded in that situation. Derek Buescher asked if suing was the only way to gain access to letters in a closed file, and the answer seemed to be yes, probably.

Hans Ostrom asked Ms. Lehmann if she recommended that we conduct criminal background checks on candidates for faculty positions. She reported that other employers “are looking at whether this is a good idea,” and that it may be a good thing to do when working with minors. She said she would have to think about whether she would recommend that we at the University of Puget Sound conduct such background checks.

Taranovski asked about including in letters information that one stumbles onto on-line. “What if,” he asked, “I Google someone and find out some personal bad stuff about him or her and I write that I don’t think this person is qualified to teach here because of his or her statements about drug use?” Ms. Lehmann replied that such a statement would not be defamatory if it was true and that something like this could be very job related. She said that most employers look at performance and are interested in hearing about performance problems. Regarding statements about drug use, she said, “If you were to find that, you would probably bring it to someone’s attention; whether you put it in the file is another question.” She said that if someone puts out something like that in the public arena (such as MySpace) he or she would have a difficult time making a claim. But if you received the information in a private letter, that’s another matter. Ms. Lehmann pointed out that it can be a problem if someone posts false information about someone else.

Bill Haltom asked: “Is the gist of all this that if we stick to the criteria without worrying about *why* then we are covered and usually indemnified by the university? Ms. Lehmann responded, yes.

Ms. Lehmann ended by pointing out that what we say in response to telephone calls asking for references is another area where we want to be careful.

8. We then turned to the first reading of a proposed amendment to sections 6 and 7 of chapter III of the Faculty Code. Professional Standards Committee (PSC) member Douglas Cannon explained the proposal. The proposal, contained in a side-by-side document that presents current language and proposed new language, is attached to these minutes. Also attached is a document that summarizes the major changes. Cannon’s description of the proposal was based on that summary document. Cannon explained that today’s first reading constituted a motion to approve the changes that will be voted on at the May 1, 2007 faculty meeting.

Cannon projected the motion to approve the proposal on the screen at the front of the room. It was:

The Professional Standards Committee proposes an amendment to the Faculty Code to strike the current language in Chapter III, sections 6 and 7, and to substitute the language in the previously submitted document in its place.

Adoption of this amendment shall authorize the modification of the Code citations so as to bring those citations into conformity with changes in the Code occasioned by the adoption of this amendment.

The “previously submitted document” referred to is the attached side-by-side document.

Cannon explained that, while changes to the Faculty Code’s evaluation appeals process made several years ago have worked reasonably well, those changes left a few loose ends that have had unintended consequences that the current proposal is designed to correct. He said that the most glaring loose end concerns the path the file takes after an appeal is concluded. Also, detailed language is proposed to describe each stage at which a hearing can be held to determine probable cause, along with the clarification that the file is then returned to the previous level. Other changes are procedural in nature. For example, whereas currently each year a hearing board roster is created containing 42 names, under proposed language the faculty as a whole constitutes the hearing board roster subject to consent and removal for conflict of interest.

Cannon referred us to the summary document for a more complete statement of the substantive changes in the proposal. He asked that if we believe anything else in the side-by-side document also constitutes a substantive change, we let members of the PSC know before the May 1 meeting so that they can be highlighted in preliminary discussion.

Cannon explained that matters that were controversial in last year’s proposal are not included in this year’s proposal. These include confidentiality of hearings, the duration of the Hearing Board and its authority (current wording is retained), and the possibility of repeated appeals (the current proposal takes no action on that).

Ostrom thanked Cannon for his good overview of the proposal, thanks that were reinforced by a solid round of applause.

9. We then turned to the first reading of a proposal to revise Article IV, Sec. 6 of the Faculty Bylaws as follows:

Bylaws, Article IV, Sec. 6., Procedure for Election of Senators

D. Nomination and Balloting Procedure

1. Move to make the following change to clause (c):

The Secretary shall list all nominees in alphabetical order and ~~mail~~ make available a ballot to each member of the instructional staff eligible to vote. One week shall be allowed for the return of the ballots. Nominees and ongoing members of the Senate shall be identified by name and academic department on the election ballots.

2. Move to replace (h) with the following:

The Faculty Senate shall establish a system of voting that is reasonably secure against fraud and ensures a secret ballot.

Old language:

h. Envelopes shall be provided in which to return the ballots to the Secretary. The voting member must sign the envelope in order for the ballot to be counted. The ballots and envelopes shall be separated before counting begins in order to preserve the secret ballot.

Anton said the changes were “straightforward and simple in a technological age.” Bartanen noted that approval would require a three-fourths positive vote at the May 1 meeting.

We adjourned at 5:07 p.m.

Respectfully submitted,

John M. Finney
Faculty Secretary

Summary of changes to the Code created by the proposed amendment to Ch. III, Sections 6 and 7, concerning procedures for appeals and hearings.
April 9, 2007

The Motion:

The Professional Standards Committee proposes an amendment to the Faculty Code to strike the current language in Chapter III, sections 6 and 7, and to substitute the language in the previously submitted document in its place.

Adoption of this amendment shall authorize the modification of the Code citations so as to bring those citations into conformity with changes in the Code occasioned by the adoption of this amendment.

Overview of Substantive Changes:

- (1) Language concerning the function of a hearing board is brought forward from later text (namely, section 7.e) to the preamble of s. 6.
- (2) The respondent on behalf of the department, school, or program, is designated and responsibilities of the respondent are clarified.
- (3) The time-line for a response is adjusted.
- (4) The hearing board roster is expanded to include the full faculty less exemptions for conflict of interest and absence of consent. The chance of a tied hearing board is reduced.
- (5) A repair is made to the current confused language about the path taken by the file after an appeal is concluded.

Background:

Since the implementation of major revisions to the Code in 2002, many questions have been raised regarding the hearing board/appeals process that is described in Ch. III, sections 6 and 7. Most of these questions reflect logical differences between levels of appeals (department/school/program versus Advancement Committee) that were not considered when the two separate levels were created.

Rather than develop a complex set of piecemeal amendments and interpretations, the 2005-06 PSC, with some input from the Faculty Senate, proposed a comprehensive revision of Ch. III, sections 6 and 7. The first reading of the amendment occurred at the Faculty Meeting on October 24, 2005. Amendments to the amendment were proposed, discussed, and voted on at subsequent meetings (12/6/05, 1/31/06, 3/6/06), but the revision as a whole was never acted upon. **This new revision attempts to capture the sentiment of those prior meetings by sidestepping those issues that seemed controversial in favor of correcting the problems that still exist in these sections.** Left unchanged are (1) the clause concerning confidentiality of the proceedings of a hearing board; (2) the authority and continued existence of a hearing board after

it has made its report; and (3) the question whether under the prevailing procedure (which provides for formal appeals at two levels) the process begins anew after a successful appeal, thereby permitting multiple appeals at the same level.

Substantive Changes by Sections:

Section 6.a. has been reorganized to clarify differences between appeals at the two levels. Changes in content attempt to clarify grounds for appeals at the two levels (i.e., the department/school/program or the FAC), to define the identity of respondents at each level, and to specify processes by which respondents and dissenters formulate and transmit information. The revision also calls for the PSC chair, rather than the appellant, to deliver the list of alleged violations.

Section 6.b. includes changes to allow for a larger hearing board roster now that there can be appeals at two stages in the evaluation process. Also new is the exclusion of PSC members from the hearing board roster.

Section 6.c. includes more detail and some logistical changes to clarify processes used to form hearing boards and to allow for selection of three rather than one alternate. The section also bars individuals from serving on hearing boards at both levels for the same appellant. Additionally, the new language codifies the current practice of having the PSC chair or designate attend the first hearing board meeting. New language specifies that a new board is selected to conduct the hearing if any member resigns.

Section 6.d. has been revised to codify the current practice that the appellant and respondent are not present during the hearing board's discussion of probable cause. The changes also specify the appropriate recipients of reports regarding probable cause at each level and indicate that all appeal materials, including a hearing board decision regarding absence of probable cause, should be included in the file before it moves on. The new language also indicates that the chairpersons of the Faculty Senate and Professional Standards should be notified regarding the decision about probable cause, so that someone in an official capacity is kept apprised of the status of the process. The correct pathway for an evaluation file at each level is specified.

Section 7 attempts to clarify the format of the hearing and the sequence and purpose of hearing board activities following a hearing, to specify who may and may not attend the hearing, and to describe processes through which dissenting opinions may be transmitted.

Sections 7. j. and k. specify parallel processes at the different levels if the hearing board finds that the code has been violated. Specifically, for appeals at the department, school, or program level, the hearing board has the option of either forwarding the file on to the FAC, or referring the matter back to the department, school, or program for correction of deficiencies. For appeals of FAC evaluations, the hearing board has the option of either forwarding the file on to the President, or referring the matter back to the FAC for correction of deficiencies.

Sections 7. l. specifies the correct pathway for an evaluation file at each level.

Section 7.m. clarifies which written materials from an appeal are added to the file and transmitted to the dean for retention. A new statement also indicates that the chairpersons of the Faculty Senate and PSC should be notified when the hearing board completes its work.

Section 6 – Procedure for an Appeal

An evaluatee may allege that there have been violations of the code during the evaluation process. A duly-constituted hearing board shall determine whether such violations have, in fact, occurred. Unless otherwise stated, the provisions of this section apply to all appeals authorized in Chapter III, Section 4.

Section 6 - Procedure for an Appeal

Unless otherwise provided, the provisions of this section apply to all appeals authorized in Chapter III, Section 4.

a. Initiation of an Appeal:

- (1) An evaluatee may initiate a formal appeal at two stages in the evaluation process:
 - (a) After the evaluation by the department, school, or program.
 - (b) After the evaluation by the Advancement Committee.
- (2) Grounds and deadlines for formal appeals:
 - (a) A formal appeal of the evaluation conducted by the department, school, or program is limited to issues affecting fairness, completeness, or adequacy of consideration by the department, school, or program in conducting the evaluation. The appeal must be initiated within ten (10) working days after the evaluatee has completed reviewing the evaluation file that the department, school, or program forwarded to the dean and the Advancement Committee (Chapter III, Section 4.b).
 - (b) A formal appeal of the evaluation conducted by the Advancement Committee is limited to questions of fairness, completeness, or adequacy of consideration by the Advancement Committee in conducting the evaluation. It may not raise questions about the evaluation at the departmental level unless the questions pertain to duties of the Advancement Committee specified in the code. The appeal must be initiated by the evaluatee within five (5) working days after receiving the Advancement Committee’s recommendation (Chapter III, Section 4.c.(6)).
- (3) To initiate a formal appeal, the evaluatee must submit a list specifying alleged violations of the code to the chairperson of the Professional Standards Committee within the time limits specified above.
- (4) Upon receipt the chairperson of the Professional Standards Committee shall provide a copy of the list of alleged code violations to the department, school, or program (if the evaluatee is appealing its evaluation) or to the Advancement Committee (if the evaluatee is appealing its evaluation).

a. Initiation of an Appeal:

- (1) The evaluatee must submit a list specifying alleged violations of the code to the chairperson of the Professional Standards Committee within the time limits provided in section 4.b.(4) or 4.c.(6), whichever is applicable.
- (2) At the time the list of alleged violations is submitted to the chairperson of the Professional Standards Committee, the evaluatee must provide a copy of the list of alleged violations to either the department, school, or program or the Advancement Committee as appropriate to the violations specified. The chairperson of the Professional Standards Committee shall confirm with respondent(s) their timely receipt of the list of alleged violations.
- (3) Any response(s) from the department, school, or program; the Advancement Committee; or the president shall be submitted to the chairperson of the Professional Standards Committee within ten (10) working days of the respondent(s)' receipt of the list of alleged violations. The chairperson of the Professional Standards Committee and the chair of the hearing board may grant an extension for submission of a response if a respondent demonstrates that s/he was unable to take receipt of the list of alleged violations at the time they were provided by the evaluatee due to circumstances beyond his or her control. Any respondent(s) who respond(s) must provide the evaluatee with a copy of the response.
- (4) The chairperson of the Professional Standards Committee shall transmit the list of alleged violations to the chairperson of the hearing board as soon as that person is elected.

(5) Response to an appeal:

- (a) In a formal appeal of an evaluation conducted by a department, school, or program, the head officer (or the person performing the functions of the head officer in the evaluation, as provided by Chapter III, section 4.a (3)(a)) will serve as the respondent for the department, school, or program. If the head officer (or the person performing the functions of the head officer in the evaluation) is unable to so serve, the other members of the department, school, or program will select a person to serve as the respondent.
- (b) In an appeal of an evaluation conducted by the Advancement Committee, the Advancement Committee will designate one of its members as the respondent.
- (c) Any response from the department, school, or program to an appeal shall be submitted in writing to the chairperson of the Professional Standards Committee within ten (10) working days of the receipt of the list of alleged code violations. In formulating this response, the respondent (as defined above) shall consult with the members of the department, school, or program who participated in the evaluation conducted by the department, school, or program. The document shall represent the response of the department, school, or program, and not the personal response of the respondent. Any member of the department, school, or program who participated in the evaluation and who dissents from the departmental response may submit a written dissent, which shall be provided to the respondent to forward, along with the response of the department, school, or program, to the chairperson of the Professional Standards Committee. The chairperson of the Professional Standards Committee shall transmit the response and any dissent to the appellant and to the hearing board.
- (d) Any response to an appeal from the Advancement Committee and any dissent to that response shall be submitted in writing to the chairperson of the Professional Standards Committee within ten (10) working days of the receipt of the list of alleged code violations. The chairperson of the Professional Standards Committee shall transmit the response and any dissent to the appellant and to the hearing board.
- (e) an extension for submission of a response or a dissent from either a department, school, or program or the Advancement Committee may be granted if a respondent or a dissenter demonstrates that he or she was unable, due to circumstances beyond his or her control, to

<p>complete the response or dissent within the ten (10) working day limit. The chairperson of the Professional Standards Committee and the chairperson of the hearing board must both concur that the extension is warranted.</p>	
<p>b. Hearing Board Roster: A hearing board roster will be established annually by the Faculty Senate executive officers. The hearing board roster will consist of all tenured members of the faculty, subject to their consent and to the following exclusions. The chairperson of the Faculty Senate, members of the Faculty Advancement Committee, and members of the Professional Standards Committee are excluded from the hearing board roster. Faculty members who are on leave are excluded from service on a hearing board.</p>	<p>b. Hearing Board Roster: A hearing board roster will be established annually by the Faculty Senate executive officers. The Board will consist of 42 tenured faculty members selected at random, subject to their consent.</p> <ol style="list-style-type: none"> (1) Members will serve staggered three-year terms with 14 members selected each year. (2) Faculty who are on leave remain on the roster but are not considered for service on a hearing board. However, members who go on leave in the third year of their term or members who resign from the roster will be replaced for full three-year terms using the process described above. (3) If a faculty member is selected to the Advancement Committee during a term of service on the hearing board roster, s/he will be replaced for a full three-year term using the process described above.
<p>c. Formation of a Hearing Board: Upon receipt of the list of alleged code violations, the chairperson of the Professional Standards Committee shall meet with the chairperson of the Faculty Senate, the appellant, and the respondent within five (5) working days to form a hearing board composed of five (5) members from the hearing board roster.</p> <ol style="list-style-type: none"> (1) Excluded from the hearing board will be members of the appellant’s department, school, or program, and all others with direct interest in the matter as determined by the chairperson of the Professional Standards Committee and the chairperson of the Faculty Senate (or by a designated member of the appropriate body if its chairperson may be affected by the exclusion principle noted above). If either chairperson (or designee) votes for elimination, the faculty member is not selected to the hearing board. (2) Excluded from selection are members of the hearing board roster in current service on another hearing board. (3) If in the same evaluation process an evaluatee appeals the evaluation conducted by the department, school, or program <i>and</i> the evaluation conducted by the Advancement Committee, faculty members who served on the first hearing board are excluded from service on the second hearing board. (4) The following process shall be used to constitute a hearing board: <ol style="list-style-type: none"> (a) The chairpersons of the Faculty Senate and the Professional Standards Committee shall jointly select eight names at random 	<p>c. Formation of a Hearing Board: Upon receipt of the list of alleged violations (Section 5.a(2)), the chairperson of the Professional Standards Committee shall form within five (5) working days a hearing board composed of five (5) members from the hearing board roster.</p> <ol style="list-style-type: none"> (1) Excluded from the hearing board will be members of the appellant's department and all others with direct interest in the matter as determined jointly by the chairperson of the Professional Standards Committee and chairperson of the Faculty Senate (or a designated member of the above mentioned bodies if the chairperson(s) may be affected by the exclusion principle). If either of the chairpersons or designees votes for elimination, the faculty member is not selected. (2) Also exempt from selection are members of the hearing board roster in current service on a hearing board. (3) The following process shall be used to constitute a hearing board: <ol style="list-style-type: none"> (a) Six names shall be selected at random by the chairperson of the Faculty Senate and the chairperson of the Professional Standards Committee from those names remaining on the hearing board roster after the exclusions noted in paragraphs (1) and (2) have been taken into account. (b) The parties may then challenge any name on the list on account of interest or bias. The order of challenge shall be determined by lot, with each side alternating. Challenges on account of interest or bias shall be ruled upon jointly by the chairperson of the Professional Standards Committee and the chairperson of the Faculty Senate. If either votes for elimination, the person is eliminated, and an additional name is selected from the hearing board roster. (c) The parties may then exercise no more than two challenges against the six names remaining on the list without stating cause. If any person is

<p>from those names remaining on the hearing board roster after the exclusions noted above have been taken into account.</p> <p>(b) The appellant and the respondent may then challenge any name on the list of eight on account of interest or bias. Who may challenge first shall be determined by lot, with each side alternating thereafter. Challenges on account of interest or bias shall be ruled upon jointly by the chairperson (or designee) of the Professional Standards Committee and the chairperson (or designee) of the Faculty Senate. If either votes for elimination, the faculty member is eliminated, and an additional name is selected from the hearing board roster. The additional name may also be challenged on account of interest or bias.</p> <p>(c) The appellant and the respondent may then exercise no more than two challenges each against the eight names remaining on the list without stating cause. If any person is eliminated, an additional name shall be selected from the hearing board roster. The additional name may be challenged on account of interest or bias. The appellant or the respondent may also challenge the additional name without stating cause, until the two permitted challenges without stating cause have been exercised.</p> <p>(d) The first five faculty members selected to the list shall constitute the hearing board. The sixth, seventh, and eighth named faculty members will stand, in that order, as alternates. Alternates will not participate in the appeal unless one or more of the five hearing board members cannot serve from the beginning of the hearing board process.</p> <p>(5) The normal presumption is that the faculty members will serve on a hearing board to which they are selected. The chairperson of the Faculty Senate and the chairperson of the Professional Standards Committee may, if both agree, exclude a faculty member from service based on a self-disclosed conflict of interest, hardship, or other good cause shown.</p> <p>(6) In the event that any member of a hearing board is unable to complete service after the hearing board process has begun, a new hearing board shall be formed, using the process outlined above, to conduct the hearing</p> <p>(7) The hearing board shall hold its first meeting within five (5) working days of its selection and shall elect a chairperson. At this initial meeting the hearing board shall also elect a secretary to record the actions of the hearing board. The chairperson of the Professional Standards Committee or designee shall attend this initial meeting and shall give the appellant's list of alleged code violations to the chairperson of the hearing board as soon as that person is elected.</p>	<p>eliminated, an additional name shall be selected from the hearing board roster.</p> <p>(d) The first five faculty members selected to the list shall constitute the hearing board. The sixth named faculty member will stand as an alternate. This faculty member will not participate in the appeal unless one of the five hearing board members is unable to serve from the beginning of the hearing board process (Section 5.c(6) below).</p> <p>(4) The normal presumption is that faculty members will serve on a hearing board to which they are selected. The chairperson of the Faculty Senate and the chairperson of the Professional Standards Committee may, if both agree, exempt a faculty member from service based on (1) a self-disclosed conflict of interest, (2) hardship, (3) other good cause shown.</p> <p>(5) In the event that one member is unable to complete service after the hearing board process has begun, the hearing board shall continue with four members if the appellant and the university representative agree. If either party objects, a new hearing board will be formed. If more than one member is unable to complete service, a new hearing board will be formed using the process outlined in Section c above.</p> <p>(6) The hearing board shall hold its first meeting within five (5) working days of its selection and shall elect a chairperson. The board shall also select a secretary to record the actions of the board.</p>
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<p>(8) No person involved in the hearing shall make public statements, directly or indirectly, about matters presented in the hearing.</p>	<p>(Exact wording from Section 7, i. below.)</p>
<p>d. Determination of Probable Cause:</p> <p>(1) The hearing board shall meet without the presence of the appellant and respondent in order to determine whether there exists probable cause for an appeal. In making that determination, the hearing board shall review the appellant’s list of alleged code violations, the respondent’s response, and any dissents, and shall have access to all files and records involved in the evaluation process.</p> <p>(2) Within ten (10) working days of receipt of the respondent’s response and any dissents, the hearing board shall determine, based on its review of the written materials, whether or not there exists probable cause for an appeal and shall so notify the appellant, the respondent, the dean, and the chairpersons of the Faculty Senate and the Professional Standards Committee of the decision.</p> <p>(3) If two (2) or more members of the hearing board determine that probable cause for an appeal exists, a hearing shall be held by the hearing board pursuant to Chapter III, Section 7.</p> <p>(4) If the hearing board determines that probable cause for an appeal does not exist, the hearing board’s written determination of no probable cause shall be included in the evaluation file, along with the appellant’s list of alleged code violations, the respondent’s response, and any dissents. The evaluation file, with these items included, then moves to the next stage of the evaluation process.</p>	<p>d. Determination of Probable Cause:</p> <p>(1) The board shall have access to all files and records involved in the evaluation process together with a list of violations alleged by the evaluatee and any responses by the department, school, or program or the Advancement Committee.</p> <p>(2) Within ten (10) working days of receipt of any and all responses under Section 5.a(3), the hearing board shall determine whether, based on the record and the allegations of violations, there exists probable cause for an appeal.</p> <p>(3) If the hearing board decides that probable cause for an appeal does not exist, it shall so notify the appellant and the president, at which time the president will forward the recommendations and evaluation materials to the Board of Trustees as specified in Section 4.e.(4).</p> <p>(4) If two (2) or more members of the hearing board determine that probable cause for an appeal exists, a hearing will be held by the hearing board pursuant to Chapter III, Section 6.</p>
<p><u>Section 7 – Procedure for a Hearing</u></p> <p>a. A hearing may extend over more than one meeting of a hearing board. The appellant and the respondent may be present at all meetings of a hearing. The respondent may be assisted at a hearing by legal counsel or by non-lawyer counsel. The appellant may also be assisted by an academic colleague and acted for by legal or non-lawyer counsel chosen by the faculty member.</p> <p>b. Hearings shall not be open to the public. The only persons present shall be those persons whose presence is allowed by the sections of this chapter pertaining to appeals and hearings. However, at the request of either the appellant or respondent, and subject to the concurrence of the hearing board, a representative of an educational association or other appropriate association shall be allowed to</p>	<p><u>Section 7 - Procedure for a Hearing</u></p> <p>a. The chairperson of the board shall preside and shall handle administrative duties, such as giving notices and speaking for the committee. He or she shall rule on matters of procedure and evidence, subject to being overruled by a majority of the committee.</p> <p>b. In proceedings before the board, the respondent shall be represented by a person or persons designated by the president or the dean. The appellant may attend all hearings in person and may be assisted by an academic advisor and acted for by lawyer or non-lawyer counsel chosen by the faculty member.</p> <p>c. Hearings shall not be open to the public, and the only persons present shall be those persons whose presence is allowed by these sections of this chapter</p>

<p>observe a hearing.</p> <p>c. In all cases, the university shall make an electronic record of a hearing. If requested by the appellant or respondent, the university shall provide a copy of the electronic record or a verbatim transcript of the hearing paid for by the requesting party. The electronic record made of a hearing shall be retained by the university for six years after the hearing board makes its report.</p> <p>d. The chairperson of the hearing board shall preside at a hearing and shall handle administrative duties, such as giving notices and speaking for the hearing board. He or she shall rule on matters of procedure and evidence, subject to being overruled by a majority of the hearing board.</p> <p>e. The hearsay rule or other exclusionary rules of evidence used in courts of law shall not apply.</p> <p>f. The hearing board shall confine its review and its judgments to the stage of evaluation that is under appeal. The evidence on review in a hearing shall be substantially confined to the written record on which the department, school, or program or the Advancement Committee made its decision. This evidence should not be significantly expanded at the hearing by the admission of testimony and information not previously considered by the department, school, or program or by the Advancement Committee. The appellant or the respondent may offer to present additional evidence deemed relevant, and the hearing board at its discretion may hear or decline to hear such additional evidence. If witnesses testify, they may be cross-examined by the opposing party. Witnesses may be permitted to testify by signed written statements if, in the hearing board's judgment, that is the most feasible way of presenting their evidence and if the opposing party is not substantially prejudiced by the lack of opportunity to cross-examine. The hearing board shall have no duty to seek or to present evidence but may do so if, in its judgment, justice requires it.</p> <p>g. Insofar as practicable, each party shall assist the other in obtaining witnesses and evidence when the party's assistance is necessary or helpful. Each party shall make specifically requested and relevant documents or other tangible evidence in its possession available, where possible, to the other party for presentation to the hearing board.</p>	<p>pertaining to the appeal. However, at the request of either party, a representative of an educational association or other appropriate association shall be allowed to observe hearings with the concurrence of the board.</p> <p>d. In all cases, the university shall provide an electronic record and, if requested by either party, a verbatim transcript of the proceedings paid for by the requesting party. Records made of the hearings shall be retained by the university for six years after the committee makes its report.</p> <p>e. The function of the hearing board shall be to determine whether there have been violations of the code, as alleged by the appellant.</p> <p>f. The evidence on review shall be substantially confined to the written record that has been compiled in the evaluatee's file through the point at which the review occurs. This is the material upon which the decision has been made to this point, and it should not be significantly expanded at the hearing by the admission of testimony and information not previously considered. Parties may offer to present additional evidence that they deem relevant and the hearing board in its discretion may hear or decline to hear such additional evidence. The hearing board shall base its decision preponderantly upon the written record on which the matter has earlier been decided by the department or school or the Advancement Committee, confining its review and its judgments to the stage of evaluation that is under appeal. If witnesses testify, they may be cross-examined by other parties present. Testimony of witnesses by signed written statements may be allowed if, in the Board's discretion, that is the most feasible way of presenting their evidence and if the opposing party is not substantially prejudiced by lack of the ability to cross examine. The board shall have no duty to seek or to present evidence but may do so if, in its judgment, justice requires.</p> <p>g. The hearsay rule or the other exclusionary rules of evidence used in courts of law shall not apply.</p> <p>h. Insofar as practicable, each party shall assist the other in obtaining witnesses and evidence when the party's assistance is necessary or helpful. Each party shall make specifically requested and relevant documents or other tangible evidence in its possession available to the other for presentation to the Board.</p> <p>i. No person involved in the hearing shall make public statements, directly or indirectly, about matters presented in the hearing.</p>
<p>h. After completion of a hearing, the hearing board shall meet to deliberate and come to a decision. Deliberative meetings shall be conducted without the appellant and respondent present and without making an electronic record. The decision of the hearing board will be limited to questions of the fairness, completeness, or adequacy of consideration in the evaluation conducted by the department, school, or program or by the Advancement Committee. The decision shall be based on whether the evidence in the written record and the evidence received during the appeal process and the hearing clearly show that</p>	<p>j. Within ten (10) working days after completion of the hearing, the Board shall make its decision. The decision shall be based on whether the evidence in the record and that received at the hearing clearly shows that there have been violations of the code as alleged by the appellant. The decision of the hearing board will be limited to issues affecting the fairness, completeness, and adequacy of consideration of the evaluatee.</p> <p>k. The decision of the majority of the hearing board, and any dissent, shall be transmitted in writing to all parties to the appeal. That decision may include a</p>

<p>there have been violations of the code as alleged by the appellant.</p> <p>. i. Within ten (10) working days after completion of a hearing, the hearing board shall render its decision about whether violations of the code, as alleged by the appellant, have occurred. The decision of the majority of the hearing board and any dissent by a minority of the hearing board shall be transmitted in writing to the appellant, the respondent, and the dean. The hearing board’s decision, any dissents, and any exhibits received in the hearing, along with the appellant’s list of alleged code violations, the respondent’s response, and any dissents by members of the department, school, or program or by members of the Advancement Committee, are added to the evaluation file.</p> <p>j. If a hearing board determines that the code has been violated as alleged by the appellant in an appeal of the department, school, or program, the hearing board’s decision may include a direction that the matter be returned to the department, school, or program for correction of deficiencies.</p> <p>k. If a hearing board determines that the code has been violated as alleged by the appellant in an appeal of the evaluation by the Advancement Committee, the hearing board’s decision may include a direction that the matter be returned to the Advancement Committee for correction of deficiencies.</p> <p>l. If a hearing board does not find that the code has been violated as alleged by the appellant or, even though it finds code violations, does not direct that the file be returned to an earlier stage, then the file moves forward to the next stage of the evaluation process.</p> <p>m. The chairperson of the hearing board shall deliver to the dean in a sealed envelope the electronic record of the hearing and copies of the hearing board’s majority decision, any minority dissents, any exhibits received in the hearing, the appellant’s list of alleged code violations, the respondent’s response, and any dissents by members of the department, school, or program or by members of the Advancement Committee. The dean shall retain these materials for six years after the hearing board makes its report. After a hearing board has rendered its decision and transmitted its reports, the chairperson of the hearing board shall notify the chairpersons of the Faculty Senate and the Professional Standards Committee.</p>	<p>direction that the matter be returned to the department or Advancement Committee for correction of deficiencies.</p> <p>l The board chair will enclose in a sealed envelop the exhibits received in the hearing and the electronic record and deliver the envelop to the dean for the preparation of transcripts or retention as required in Section 6.d.</p>
<p>The faculty also voted to include the following statement in the motion:</p> <p><i>Adoption of this amendment shall authorize the modification of the Code citations so as to bring those citations into conformity with changes in the Code occasioned by the adoption of this amendment.</i></p>	

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