

Faculty Senate Minutes September 26, 2005

Members present: Anton (chair), Bartanen, Bristow, Buescher, Haltom, Holland, Howes, Israel, Kim, Lear, McGruder, Orlin, Racine, Singleton, Sousa, Wimberger

Guests: Carlo Bonura, Bill Breitenbach, Jessica Bruce, Alyce DeMarais, Karim Ochosi, Susan Stewart, Carrie Washburn

Coming to life

The minutes of the April 18, 2005 meeting were accepted.

The minutes of the September 12, 2005 meeting were accepted.

There was no chair's report.

The Senate welcomed Julie McGruder, who will serve on the Senate for the fall term, and Derek Buescher, who will serve for a year.

PSC proposes amendments to Chapter 3, Sections 6 and 7 of the Faculty Code

Bill Breitenbach attended the Senate meeting to provide an overview of the Professional Standards Committee's proposed revisions to Chapter 3 of the Code, explaining that other recent changes to the Code seemed to require some work on the language of Sections 6 and 7. He invited questions and comments from senators, acknowledging that the PSC's proposal is subject to revision and amendment by the faculty. The PSC's proposal is attached to these minutes.

These minutes are not chronological, but are instead organized around the sections of the PSC proposal discussed by the Senate and Professor Breitenbach.

6.2(b)

Breitenbach noted that the PSC draft states that a formal appeal of an FAC evaluation will be "limited to questions of fairness, completeness, *and* adequacy," and acknowledged Senator Haltom's helpful suggestion that the "and" be changed to an "or."

6.5(b)

Sousa asked about the rationale for the draft provision 6.5(b), which makes the dean or the dean's designee respondent for the Advancement Committee in appeals of FAC evaluations, since in his experience the dean does not chair the FAC. Breitenbach said that since the FAC respondent would be acting as an agent of the university in cases in which the institution as a whole has much at stake, it seemed reasonable to give this role to the dean or the dean's designee.

Haltom noted that the language of 6.5(b) does not take account of one key feature of the third year review process. In third year reviews, the FAC makes recommendations to the dean. This might leave the dean in the position of defending the committee on a committee recommendation which the dean would then consider. Breitenbach said that there is inevitably going to be some messiness, and that deans might sometimes have to wear two hats.

Haltom also noted that in his experience the FAC does not elect a chair, and that on his reading of the faculty by-laws this is a violation since each committee is supposed to elect a chair.

6.5(c)

Haltom opined that the proposed language of 6.5(c), which makes clear that any response to an appeal from a department truly will be a *departmental* response and allows for minority reports, is a major improvement.

Hearing board rosters

Breitenbach focused the Senate's attention on suggested changes in the way hearing board rosters are developed. It is possible that several hearing boards will be required at the same time, and we risk running out of bodies to staff them. Under the proposed language, the hearing board roster will consist of all tenured members of the faculty, subject to their consent, exempting colleagues on leave and excluding the faculty Senate chair, FAC members, and PSC members. The goal here is to increase the size of the pool from which hearing boards are drawn.

Haltom asked whether language that states that the PSC chair and the Faculty Senate chair will "jointly" determine which faculty members should be excluded from a hearing board (due to having some direct interest in the case) is consistent with the later language stating that either the PSC chair *or* the Faculty Senate chair can eliminate an individual from consideration for membership on a hearing board.

Sections 6 and 7 on hearing board procedures

Breitenbach observed that some proposed changes to these sections are necessary because the old code language assumed that hearing boards would be constituted only after the FAC stage of the evaluation process. The possibility of appeals and hearing boards prior to the FAC stage requires changes. For example, the Code now orders hearing boards to transmit findings that there is no "probable cause" directly to the president. The PSC thought that we do not want "first stage" hearing boards (those considering appeals focused on departmental decisions) to do this. The goal of the new process is to present the president with files (including all of the hearing board findings) after they have gone through all of the other stages.

McGruder approvingly noted that the proposed language asserts that a hearing may last for more than one meeting of a hearing board.

Haltom asked whether this language here provided an implicit answer by the PSC to the question, "Is a hearing board that finds probable cause in its preliminary considerations of a case required to hold a hearing?" Breitenbach said that the language was not intended to address this question. Haltom observed that under the proposed language a hearing board cannot reach a summary decision and claim that it had held a hearing without the presence of the parties. Breitenbach agreed that the proposed Code language would forbid this. The new language does not compel attendance but it does permit appellants and respondents to attend hearings if they wish to do so.

7(d)

Haltom observed that there is some ambiguity in this section, which prohibits participants in a hearing from making "public statements" about matters presented in the hearing. Does this mean that a participant can say whatever he or she wishes in private? The PSC probably intends to require participants to maintain confidentiality. Haltom suggested that some new language might help PSC to achieve this objective.

7(h)

Haltom suggested that the PSC or the faculty might wish to add some language to this section to protect confidential materials. Under the proposed language an appellant's request for "relevant

documents” might include a request to receive confidential letters, for example. Haltom said that the PSC probably wishes to ensure that closed files remain closed.

7(k)

Breitenbach noted that under the proposed 7(k) a hearing board that finds that the code has been violated has the option of referring the matter to the school, department, program, or the FAC, as appropriate, to correct deficiencies. The hearing board *may* suggest corrections, but it may *not* mandate actions to correct remedies. The hearing board dissolves at the time that it renders its decision about violations of the code and transmits its decision and any recommendations for correction of those violations. Breitenbach argued that the PSC language is intended in part to avoid having a hearing board “acting as a quasi-FAC running its own process.” A hearing board decides and disbands. It is the responsibility of parties at the next stage of the evaluation process to address the code violations that the board identified.

Haltom noted that the first two appearances of “or” in the proposed 7(k) language might leave a hearing board discretion to send its findings to either a department, school, program, or the FAC. He suggested that the PSC might intend that the hearing board send the file to “whoever sent it over.”

Haltom also worried that hearing boards’ suggestions for correcting deficiencies, particularly “staged remedies” they might suggest, could never be policed since the boards disband at the time they make their findings and recommendations. This might leave departments or the FAC wondering exactly what the hearing board wanted of them.

Bartanen said that the role of a hearing board is to determine whether there has been a violation of the code and to suggest corrective actions if it so wishes. Once it has done so, its work is done.

Singleton asked whether the Code prescribes “what happens next” if a hearing board finds that the Code has been violated and chooses not to recommend any way to correct deficiencies. Breitenbach said that the hearing board would issue its report. In some cases, the board might have found code violations that appear to be irremediable; in other cases, it may have found harmless errors. Singleton then said that he understood this to mean that if a hearing board does not recommend a remedy, its report goes on to the body acting in the next stage of the evaluation process. He then asked whether there was room for the Academic Vice President to cause corrections of deficiencies if a hearing board has failed to recommend corrections. Breitenbach noted that if the appeal had been from a departmental evaluation and a hearing board found one or more code violations but failed to suggest a correction of deficiencies, the FAC might return the file to the department for correction. Singleton then asked about appeals from the FAC’s decisions, and whether it would be the President’s responsibility to recommend methods for correcting deficiencies if the hearing board hadn’t suggested remedies. Breitenbach wondered how often hearing boards call for corrections of deficiencies as opposed to merely citing violations of the code. Some violations would be difficult to remedy. Haltom noted that the FAC must determine if the file is complete and that that the department has given the file “adequate consideration.” The FAC may request additional information and suggest corrections for deficiencies it finds in the file. Haltom thought that we are probably covered at the FAC stage. He said that he was less sure of how things work at the presidential level. Breitenbach said that the president *may* ask the FAC for more information; the FAC *must* assert that a file is complete before it moves to its evaluation of that file. He noted that FAC evaluations may be appealed to the second hearing board. Orlin observed that all of this would have to go the president. Bartanen said that this is how the system now works. All hearing board findings become part of

the file that goes to the president. If the president requires more information, the president may request more information.

Breitenbach, acknowledging that this might sound “Pollyannish,” observed that any file that gets “banged up” at an early stage of the evaluation process is likely to attract careful attention as it moves to the next stages of the process.

Academic calendar

The Senate then turned to the Curriculum Committee’s proposal to change the academic calendar.

Orlin M/S that the Senate accept the calendar proposed by the Curriculum Committee.

The Senate briefly discussed the faculty meeting and the faculty decision to allow the Senate to handle the calendar issue. The Senate recognized that it has been given responsibility to decide, subject to the normal processes by which the full faculty can assert itself on matters of governance.

Associate Dean DeMarais then reported for the Curriculum Committee. She informed the Senate that the Curriculum Committee will not discuss this issue any further. The calendar is set for the next three years, and the proposed revisions are in the hands of the Senate.

Senators then reported on their impressions of the will of the faculty based on comments at the faculty meeting. Holland said that faculty favor making the Wednesday prior to Thanksgiving a travel day. McGruder reported that some colleagues are worried about shortening the reading period, while others seem to think that the reading period is not used for reading by a large number of students. Israel agreed with Holland that faculty seemed to support the pre-Thanksgiving travel day. He added that there was some confusion about the plan to equalize the number of teaching days in each term, that there was concern about the possibility that students could end up with four final exams in a single day, and that Thompson Hall faculty did not seem to be troubled by the current fall term’s short last week and its impact on lab schedules. He thought that there was not strong support for the CC proposal.

The student representatives, Israel and Howes, reported on their constituents’ views. Israel announced that ASUPS is neutral on the proposed calendar. Howes reported that students’ views were mixed. Some students think that the three day reading period would be too short. Both Israel and Howes observed that students appreciate the fall break day but see no good reason to extend that break at the cost of a day later in the term or a day of reading period.

Senators then articulated their own views of the issue, or reported on feedback from colleagues.

Orlin noted that some faculty members he spoke with liked the proposed calendar. The discussion of creating the Wednesday travel day raised many other issues about the calendar, and the CC had addressed and balanced many concerns.

Bristow highlighted students’ concerns about the shortened reading period. She thinks the current exam schedule is superior to the four day schedule in the proposed calendar. She asked whether students could petition around a third or fourth exam on a single day. Bartanen said that we allowed petitions when students faced four exams in a day. Now that three exams are the maximum, we have no provision for petitions.

McGruder said it seemed sensible to have an equal number of teaching days in the fall and spring terms, and thought it seemed right to match the five day spring break with two “fractional” breaks in the fall. McGruder also observed that at least some students use reading period for social purposes rather than study. Sousa and Bristow suggested that we should approach the reading period issue with an eye toward the needs of students who do use the days for study and exam preparation rather than focusing on those who use the days for other purposes.

Holland said that we should consider reducing the number of teaching days, citing data she reported at the faculty meeting showing UPS with more teaching days than many peer and aspire-to schools. Bartanen noted that our accrediting bodies do not set a minimum number of teaching days, but said that UPS is right on the average in terms of numbers of teaching days.

Orlin said that the new calendar was worth a try, noting that the current calendar, with different numbers of teaching days in the fall and the spring, may short change fall term students in some courses. He also questioned whether the difference between a three and four day reading period was significant.

Bartanen observed that it appears that only the pre-Thanksgiving travel day has clear momentum and widespread support.

Holland suggested that the Senate form a subcommittee to work on the calendar. Lear spoke against this proposal, suggesting that the Senate is a small enough body to work through this issue.

M/S/P the Senate agreed to postpone further consideration of this issue until the next meeting.

There was a motion to adjourn, followed by noise that sounded like debate on other issues but could not have been. Ever so gradually the motion was seconded and passed, and we agreed to meet again in no small part because our time together had been so pleasant. And, of course, because we must.

David Sousa, Secretary

DRAFT REVISION OF CHAPTER III, SECTIONS 6 AND 7
Prepared by the Professional Standards Committee
April 28, 2005

Section 6 – Procedure for an Appeal

An appeal is decided by a hearing board. The function of a hearing board shall be to determine whether there have been violations of the code, as alleged by the appellant. Unless otherwise stated, 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 to a hearing board 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 by the department, school, or program is limited to issues affecting fairness, completeness, and 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, Sections 4. b. 3 and 4. b. 4).
 - (b) A formal appeal of the evaluation by the Advancement Committee is limited to questions of fairness, completeness, and adequacy of consideration by the Advancement Committee in conducting the evaluation. It may not raise questions about the evaluation at the departmental level. 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 provided.
- (4) 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

evaluee is appealing its evaluation) or to the Advancement Committee (if the evalúee is appealing its evaluation).

(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 dean will appoint a person to serve as the respondent for the department, school, or program.
- (b) In an appeal of an evaluation conducted by the Advancement Committee, the dean or the dean's designee will serve as the respondent for the Advancement Committee.
- (c) Any response from the department, school, or program to an appeal shall be submitted 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 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) The chairperson of the Professional Standards Committee and the chairperson of the hearing board may grant an extension for submission of a response or a dissent from either a department, school, or program or the Advancement Committee if a respondent or a dissenter demonstrates that he or she was unable, due to circumstances beyond his or her control, to complete the response or dissent within the ten (10) working day limit.

- 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 and exemptions. 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 exempted from service on a hearing board.
- 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.
 - (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 jointly 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). If either chairperson (or designee) votes for elimination, the faculty member is not selected to the hearing board.
 - (2) Exempt 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 *and* the evaluation conducted by the Advancement Committee, faculty members who served on the first hearing board are exempt from service on the second hearing board.
 - (4) The following process shall be used to constitute a hearing board:
 - (a) Eight 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 and exemptions noted above have been taken into account.
 - (b) The appellant and the respondent may then challenge any name on the list of eight 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 (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.

- (c) The appellant and the respondent may then exercise no more than two challenges 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.
 - (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.
- (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, exempt a faculty member from service based on a self-disclosed conflict of interest, hardship, or other good cause shown.
 - (6) In the event that one member of a hearing board 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 respondent agree. If either the appellant or the respondent 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 above.
 - (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 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.
 - (8) Members of a hearing board shall make no public statements, directly or indirectly, about matters presented in an appeal or a hearing.
- d. Determination of probable cause:
- (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.

- (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 there exists probable cause for an appeal.
- (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.
- (4) If the hearing board determines that probable cause for an appeal does not exist, it shall so notify the appellant, the respondent, the dean, and the chairperson of the Professional Standards Committee. 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.

Section 7 – Procedure for a Hearing

- 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 appellant and 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.
- 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 observe a hearing.
- 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.
- d. No person involved in a hearing shall make public statements, directly or indirectly, about matters presented in a hearing.
- e. 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.
- f. The hearsay rule or other exclusionary rules of evidence used in courts of law shall not apply.

- g. 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.
- 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 party for presentation to the hearing board.
- i. 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, and 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 there have been violations of the code as alleged by the appellant.
- j. Within ten (10) working days after completion of a hearing, the hearing board shall render its decision. 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 majority decision, any minority 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, which moves forward to the next stage of the evaluation process.
- k. If a hearing board determines that the code has been violated, it has the option of referring the matter to the school, department, or program or to the Advancement Committee, as appropriate, for correction of deficiencies. A hearing board may suggest, but cannot dictate or enforce, methods for correction of deficiencies. A hearing board is disbanded once it has performed its function of deciding whether

there have been violations of the code, as alleged by the appellant. It is the responsibility of the body or individual at the next stage of the evaluation process to insure that correctable deficiencies have been corrected.

1. 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.