

EXECUTIVE COMMITTEE MINUTES

Present: Fech, Flowers, Franti, Konecky, LaCost, Lindquist, McCollough, Prochaska-Cue, Schubert, Shea, Stock

Absent: Bolin, Rapkin

Date: Wednesday, March 24, 2010

Location: Faculty Senate Office, 420 University Terrace

Note: These are not verbatim minutes. They are a summary of the discussions at the Executive Committee meeting as corrected by those participating.

1.0 Call to Order

Fech called the meeting to order at 3:04 p.m.

2.0 Announcements

2.1 Student Money Management Center

Prochaska-Cue reported that the Center has produced posters that will be posted around campus encouraging students to save money. She announced that advisors to student groups are being encouraged to have students form a team to compete in a contest. There will be a financial quiz and winners will receive \$250.

Fech asked if the Center is working with the Credit Union and other groups on campus to promote financial savings. Prochaska-Cue reported that the Center is working with several campus offices, the Credit Union, and will be meeting with ASUN. She stated that the plan is to work with the RA's in the dorms as well.

2.2 Reminder to Turn in Reimbursement Claim Forms

Fech noted that an email message was sent out reminding participants in the health care reimbursement account to turn in their claims by March 31. Prochaska-Cue pointed out that the expenses had to be incurred by December 31. Fech wondered whether the message was a result of the meeting he and the other Senate Presidents had with VP Lechner and VP Dietze about health care issues. Both Konecky and McCollough stated that they had never seen a reminder message before. LaCost reported that she received an email message stating how much money she had left in the account.

2.3 Brown Bag Luncheon Series

Fech reported that the next Ethics Brown Bag Luncheon Series will be held tomorrow, March 25th in the City Campus Union. He stated that the topic will be on plagiarism. Flowers pointed out that the idea for having the luncheon on this topic did not come out of the Academic Honesty Committee.

2.4 Conflict of Interest Policy

Fech reported that the IANR Liaison committee is meeting on Friday, March 26th and will be discussing conflict of interest. He stated that the meeting will be on East Campus and will be available through Breeze.

2.5 Upcoming Visitors

Fech announced that Professor Bender, chair of the Academic Planning Committee, will be meeting with the Executive Committee on March 31st to discuss the Procedures to be Invoked for Significant Budget Reductions/Reallocations.

Fech announced that John Parrish, Manager of the University Bookstore, will be meeting with the Committee on April 7th and Chancellor Perlman will be meeting with the Committee on April 14.

2.6 April 6th Senate Meeting

Fech reported that Associate to the Chancellor Poser will be speaking for Chancellor Perlman at the April 6th meeting. He noted that the Chancellor, VC Owens, and Interim SVCAA Weissinger are all unavailable to speak on that date.

McCollough asked if departments are being asked to develop more substantive promotion and tenure guidelines. A number of the Committee members stated that their departments already had guidelines.

Shea asked if anyone was aware of a person being denied reappointment when they are on a tenure track line. Committee members stated that they have seen this happen. McCollough pointed out that this usually occurs when a person is not making progress towards tenure. Konecky stated that in her college, annual reviews are used to determine progress towards tenure and if progress is not being made, a person will not be reappointed.

Shea asked if people are aware of any cases where a promotion and tenure committee recommends reappointment but an administrator decides against it. He pointed out that the Committee has been reassured numerous times by administrators that the promotion and tenure process is peer driven, but this does not always happen. Members of the Committee stated that they have seen this happen and also the opposite: a person given tenure by an administrator even though the promotion and tenure committee voted it down.

Shea stated that these are concerns that need to be raised with administrators.

3.0 Minutes of 3/10/10

Griffin requested that any further changes to the minutes be sent to her by Friday.

4.0 Unfinished Business

4.1 Research Misconduct Policy

Fech noted that Professor Chouinard has some concerns with the policy and he invited Professor Chouinard to the meeting to discuss his concerns. Fech noted that Lindquist, LaCost, and Shea have been working extensively on the policy for nearly two years.

Professor Chouinard stated that there were a few things that he and the Committee can agree on. He asked if there is anyone on the Committee who feels that his motion made at the February Senate meeting is not a good idea if it could be implemented. He pointed out that the heart of his motion is that the respondent would get timely information on what evidence is being used against them so the respondent would have time to respond to the evidence before an initial judgment is passed by the investigating committee.

Professor Chouinard stated that he does not think his suggestion is undesirable and noted that Lindquist had indicated that this is something that some people on the ad hoc committee had originally tried to get into the policy. The question is how to do this without the university jeopardizing its federal funding. He stated that if we must pass the policy, he will suggest a substitute motion to approve it with reservations and directing the President of the Senate to contact our legislators and federal agencies to see if the conflict in the federal policies can be rectified as soon as possible.

Professor Chouinard stated that another possibility is to have separate policies dealing with research misconduct. One policy would specifically address misconduct in research that is federally funded. He stated that his fundamental concern is that the ad hoc committee has been sold a bill of goods. He stated that he does not believe anyone lied to the ad hoc committee, but administrators may have looked at the document only from their perspective. He pointed out that he thinks there has been very little change from the existing policy to the proposed policy. Lindquist disagreed and pointed out that quite a few changes have been made, particularly in regard to how the committees are formed and in definitions used throughout the document.

Professor Chouinard stated that he did not see much change in regards to the rights of the respondent. He noted that he recently served on an Academic Rights & Responsibilities Special Hearing Committee (ARRCSHC) that dealt with a case of research misconduct under the current policy. He noted that people on the special hearing committee knew the details of what was going on and how the current policy was flawed. Lindquist indicated that he thought the 2005 policy was based on the model that was used by the Public Health Services at that time.

Professor Chouinard stated that he has reviewed all of the Section 42 Part 93 of the Code of Federal Regulations on research misconduct, the context of the portion cited by Associate General Counsel Odabasi, and saw absolutely nothing that mandates that we have, as referred to by Associate General Counsel Odabasi, an inquisitorial process. He pointed out that the problem that was observed by the ARRCSHC is that the administration's attitude is that the respondent did not have any other rights and Associate General Counsel Odabasi thinks that the policy needs to reflect this. He stated

that if there is some other federal document that implements this, it should have been referred to in Associate General Counsel Odabsi's response and unless someone can show a federal policy that requires this, we ought to do what is right to protect the faculty.

Professor Chouinard pointed out that it would have been helpful to have had someone from the ARRCSHC consulted closely by the ad hoc committee as the policy was being drawn up so they could share their experience with having to deal with the current policy. He noted that the issue is far broader than just this particular thing. It is exactly how we don't operate collegially. He stated that we don't set a policy and then ask a faculty member to come in and affirm that policy. He stated that someone representing the concerns of that Academic Rights & Responsibilities Panel should have been heard from. Shea pointed out that both he and Professor Boden, chair and former chair of the ARRC, served on the ad hoc committee and the ARRC was consulted during the drafting process.

Shea asked if Professor Chouinard thinks that the ad hoc committee was being misled by the administration. Professor Chouinard stated that he believes that they looked at the policy from their perspective, as to what works best and what they think will get approved at a higher level. He stated that their concern is with making administration run smoothly and getting grants and if faculty rights suffer a bit that's not of their concern. Lindquist pointed out that one of the big changes in the policy is that the respondent is made aware that the ARRC can get involved earlier in the case.

Shea noted that most people are not even aware that the Office of Research policy and procedures existed and basically they put their own policy in place. He pointed out that they will continue to follow their own policy, regardless of what the Senate does. He stated that we want the opportunity to work with administration to set policy and this particular joint effort was a huge step in the right direction. He stated that the intent is to come up with a unified policy. He believes the ad hoc committee protected the most critical rights of the respondent. He asked what Professor Chouinard proposed be done now, to start over in writing a policy?

Lindquist pointed out that the way the policy is written, it is the responsibility of the investigating committee to make a judgment whether plagiarism has occurred.

Professor Chouinard stated that had the respondent had evidence at a stage where the committee did not make a preliminary decision it would be different. That is why he suggested in the Senate meeting to ask the Investigative Committee to issue a report on what the evidence is without making a decision. After getting responses from the respondent, conclusions could be made by the committee. He noted that Associate General Counsel Odabassi's responses simply don't make sense when you look at the federal regulation policies.

Professor Chouinard stated that if the Executive Committee feels like we have to go forward with the policy then it should do so, but under protest and noted that this should be made clear. He does not believe that the policy should be written as it is and that

faculty members should have the ability to know what the evidence is against them so they can defend themselves. McCollough pointed out that Professor Chouinard is suggesting that the respondent be involved from the beginning of the process.

Professor Chouinard noted that the inquiry committee and the investigation stage are two different committees. He stated that the people passing the original judgment should not draw a conclusion until the respondent has had the opportunity to rebut the evidence. Schubert pointed out that a conclusion is already made when the inquiry committee decides that an investigation should occur. He noted that the inquiry committee's decision is based on the evidence initially provided by the complainant. He stated that this does not sound legal. Professor Chouinard pointed out that in grand jury investigations usually only one side of the story is presented before charges are filed. He stated that it would be hard to argue that we use a system that is better than is used in criminal proceedings. He stated that it needs to be shown to the administration that just because the respondent has certain rights does not mean that these are the only rights of the respondent.

Fech wanted to get back to Shea's question about what course of action needs to be taken before the April 6th Senate meeting. Professor Chouinard stated that his gut feeling is that people want this to be over with in April. He pointed out that approval of the policy should not occur at the late April meeting, and if it comes to that, he would rather see it postponed until September if it is not resolved at the April 6 meeting. He noted that new senators should not have to make a decision on the policy in such a short period of time.

Schubert stated that the respondent needs to have the right to be able to see all of the evidence that is being used to make allegations against him/her. Professor Chouinard stated that he does not think faculty members were badly intentioned or unwilling to listen to the evidence, but compelling evidence would need to be provided before they would change their initial conclusion.

Professor Chouinard reported that he looked at the legal definition of the word inquisitorial and found that it means that the judge in a case is the prosecutor which suggests that the committee hearing the case is the prosecutor, but he does not see this as a desirable or required policy. He stated that the investigation committee should not be prosecutors. Schubert pointed out that every faculty members must have the same rights because currently it is not listed in the document.

Professor Chouinard stated that he trusts the faculty members to be aware and concerned about what happens to faculty in the future, more so than he trusts administrators. He pointed out that he would want faculty members to judge other faculty members, but he wants them to hear both sides of the story before making any judgment. He stated that he believes the administrators are looking at the document only from their perspective. He noted that he does not want to pick a fight with the administrators but he feels administrators do not have faculty interests at heart all of the time.

Lindquist agreed that there is nothing obvious in the federal guidelines that argues against including the language proposed by Professor Chouinard. On the other hand, the draft policy already provided the respondent with an opportunity to bring in new evidence prior to the completion of the final recommendations. He believes that this is sufficient. He pointed out that faculty members serving on the inquiry and investigative committee should not be put into a legal battle over these cases. He stated that if the respondent has the ability to provide evidence to rebut the committee's initial findings, and committee members look at this evidence, they have the opportunity to investigate the issue further. He stated that he has no problems with this. He noted that if there were some egregious error in the way the committee responded to such a rebuttal, then the respondent has the opportunity to make a legal complaint against the university.

Professor Chouinard asked if the policy should be approved under protest. Lindquist stated that he did not think this would be helpful and would not get us anywhere. Franti asked if a motion can really be made under protest. He pointed out that people would protest a document simply by not approving it. Franti suggested that a separate motion should be made asking the Senate President to contact legislators to look into changing the federal policies relating to misconduct.

Professor Chouinard stated that he will suggest an amendment to the motion calling for the Senate President to contact our representatives in congress and authorities in the public health administration to change the policy. He pointed out that the federal guidelines go back quite a ways and the current administration may not have a vested interest in sticking with the old policies. He stated that the statement would be to the Regents, administrators, and federal government, that we are seeking change in the policies as soon as is possible. He noted that the purpose of the letter is to state that the guidelines do not support the way the policies should be carried out. He pointed out that a formal statement by the Senate saying that it approves the policy at this time, not because we believe in it, but rather feel the need to approve it, and that we are asking for a change in the federal policy to make it clear that we can operate under a different policy. He noted that this does not mean that the policy will be changed anytime soon.

Stock stated that he prefers the language that the Senate approves the policy with reservations rather than protests it. Professor Chouinard pointed out that a statement could be made that states we believe respondents should have the right to see the evidence before an initial judgment is passed by the investigation committee. He noted that the inquiry committee just makes a decision whether an investigation should be made.

Fech thanked Professor Chouinard for attending the meeting and told him the Executive Committee will let him know what it plans to do with the motion on the policy. Professor Chouinard left the meeting at this time.

Shea stated that he understands Professor Chouinard's concerns and the ad hoc committee discussed them. He stated that he believes the policy has been improved enormously from the current policy and quite a few protections have been included for

the respondent. He pointed out that the proposed policy states that the respondent's comments shall be considered and included in the final report of the investigative committee.

Flowers noted that if it gets to this stage that there are other legal recourses that can be taken by the respondent. Lindquist stated that if it gets to that point, then it should go to a legal court. Schubert pointed out that a legal lawsuit could be avoided if the respondent has the opportunity to provide evidence earlier in the process. Lindquist pointed out that the policy does allow for earlier input from the respondent. Shea and Lindquist noted that the respondent does have the opportunity to provide further evidence, but the respondent does not get to see the evidence brought against them until later in the process. Lindquist stated that the inquiry committee gives the respondent a good idea of who is making the allegations and what the evidence is. Shea noted that an ARRC observer will be present throughout the process.

Lindquist pointed out that it would not be a good idea for the Executive Committee to amend the motion with protest as suggested by Professor Chouinard because so many of the Executive Committee members have served on the ad hoc committee.

Shea shared a March 24 email from Emeritus Professor McShane in which McShane expressed his remaining concerns with the proposed policy and procedures. The consensus of the Committee was that McShane's concerns were considered by the ad hoc committee and many are addressed in the revised draft. The Committee did not recommend further action in response to McShane's email.

Shea distributed comments from a faculty member who is concerned with not enough being done to restore the reputation and integrity of a person who was accused of misconduct and found not guilty. The faculty member suggested a letter of apology be sent by the accuser if misconduct was found not to have occurred. Lindquist disagreed and stated that it is the burden of the Research Integrity Officer (RIO) to restore the faculty member's reputation and that the RIO should do as much as possible to ensure this. He pointed out that the policy adequately covers this.

4.2 BRRRC Document

Prochaska-Cue noted that some grammatical errors were corrected in the document. Griffin noted that page numbers have been included. Fech stated that Professor Bender, chair of APC, will be meeting with the Committee next week to discuss the proposed changes to the document.

5.0 New Business

5.1 TOEFL Requirements

Fech reported that he received an email message from a faculty member about international students on J-1 visas and their need to meet TOEFL requirements. He stated that the faculty member teaches international students who come only to attend a class and do not have much interaction with others outside of class and wonders why the need for the students to meet the TOEFL requirements.

Shea stated that he does not believe the TOEFL requirements are absolute and believes they can be waived.

Schubert stated that he has J-1 students all of the time. He noted that the real issue has to do with social security numbers for these students and how this is handled. He suggested having someone from International Affairs come and speak to the Senate about international students and what the policies are regarding them.

The meeting was adjourned at 4:56 p.m. The next meeting of the Executive Committee will be on Wednesday, March 31 at 3:00 pm. The meeting will be held in the Faculty Senate Office. The minutes are respectfully submitted by Karen Griffin, Coordinator and David Rapkin, Secretary.