

FHRC AGENDA Tuesday, January 6th 2016

Approval of minutes from December 8th 2015

Upcoming Business:

Proposed revision to 8.4 given recent language provided by the UHP regarding consensual relationship (Chris Craig).

OLD BUSINESS – (Rhonda Ridinger has agreed to attend our February Meeting)

1. Richard Biagioni, Chair of the Academic Personnel Review Commission (APRC), has submitted to the FHRC issues related to Chapters 12 (Faculty Grievances: Academic Personnel Grievance Process (APGP) and 13 (Faculty Disciplinary Process and Sanctions: Professional Practices Review Process (PPRP)). The APRC dealt with this in 2015 resulting in questions and suggestions related to the FH, as noted.

Chapter 12 issues:

12.3.3. APRC Annual Report to Faculty Senate

The APRC shall make an annual report to Faculty Senate during the first fall meeting, specifying the total number of cases filed in the previous 12 months, the types of cases (e.g., termination of employment, denial of academic freedom of speech, etc.), whether or not there was a prima facie case and whether the grievance was resolved.

For both types of processes (APGP in Chapter 12, and PPRP in Chapter 13), the APRC is supposed to report back to the Faculty Senate on the cases. However, once the prehearing sessions (APRC Chair and UHP members), the APRC is essentially out of the loop – there is no requirement to report anything back to the APRC in either Section 12.4.6 (or subsequent sections of Chapter 12) or 13.4.8 (or subsequent sections of Chapter 13). If the APRC is expected to be aware of the outcomes of each of the subsequent steps in the process, there should be explicit language added. If the APRC should be removed from the process once the prehearing session has been completed, then the APRC report will of necessity reflect the status of the case as of the start of UHP hearings. (The only formal roles of the APRC once UHP hearings have begun are (1) approve extension of the timeline (Sections 12.4.7 and 13.4.9) and (2) providing guidance of procedural issues to the UHP (Section 12.6.1).

Notes from meeting.

1. Should this be discussed with executive faculty senate to determine what parties need to involved.
2. No parallel in bylaws....is this of concern?

RC Comment, it seems like APRC should be included as recipients of the reports.

CP Comment: I agree that APRC should be apprised of the disposition of the case in general, but they should not receive specific, personal information.

12.3.6. Notification to Parties Involved

If the APRC or the Associate Provost for Faculty Relations decides that the grievance establishes a prima facie case, the APRC shall provide written notification to the faculty member, the parties against whom the grievance was filed, and the Office of the Provost. All shall be provided with a written copy of the original grievance. The named parties against whom the grievance is brought shall file written responses with supporting documentation at the Faculty Senate Office within ten business days. Failure to respond within the time limit will be considered an admission of the facts in the grievance.

Note: In this instance, the Provost is in the loop.

12.3.8. APRC Recommendations

If the parties fail to reach a resolution, the APRC shall produce a report divided into findings of fact and recommendations with supporting reasons. This report is given to the faculty member and the party against whom the grievance has been alleged. The faculty member and APRC should be informed in writing within five business days whether the party against whom the grievance has been alleged agrees to the recommendations. If the parties agree with the recommendations of the APRC, the case is resolved.

1. In this case, there is no mention that the Provost should receive the APRC's report, but it seems like it would make sense for that to be shared with the Provost. Note that the final report of the UHP (12.4.6) also goes to the Provost.

CP Comment: I agree.

2. The third sentence focuses on the response by the party against whom the grievance has been alleged. It seems to say that if that individual agrees with recommendations, then the case is over. It should probably say that both parties must agree (consistent with the final sentence).

RC Comment; perhaps add "if both parties involved agree".

CP Comment: I agree with RC's comment

12.3.9. Right to Initiate Formal Review Process

If the case is not resolved after the APRC report has been disseminated, the faculty member may initiate the formal review process for APGP by filing written notification with the APRC in the Faculty Senate Office and sending a copy to the Provost's Office. The notification must be filed within ten business days of the receipt of the APRC report or conclusion of mediation.

1. In the APRC's dealings with this type of case, the notification was taken as a simple statement requesting that a formal review process be initiated – the key documents of the grievance (and responses) have already been provided. If that is the correct interpretation, it might make sense to state that explicitly.

RC Comment:the faculty member may initiate the formal review process for APGP by filing written notification with the APRC in the Faculty Senate Office and sending a copy to the Provost's Office "Upon filing the written notification, the faculty member has the option to submit additional key documents".

2. Question: What is the status of the process should the faculty member not submit any notification? Does that indicate that the faculty member has accepted the APRC report and recommendations? Can the faculty member restart the process based on the same grievances? (We recognize that there must be some sort of allowance for missing a deadline because of some sort of difficulty – illness, travel, etc. This question is aimed at clarifying the status of the grievance process should the faculty member simply decide not to respond, and does not give any indication to the APRC about the basis of that choice.)

Notes from meeting: Does this mean that allegations cannot be brought up again? Say next year?

RC Comment: "The notification must be filed within ten business days of the receipt of the APRC report or conclusion of mediation. Failure to do so will"

CP Comment: Failure to do so will result in closure of case.

Failure to do so will indicate a desire to close this case.
Failure to do so will result in termination of the case.

12.4.1. Composition of University Hearing Committee and Panels

12.4.1.1. University Hearing Committee

Twenty-four tenured, ranked faculty members shall be elected by the Faculty Senate to serve three-year staggered terms as the University Hearing Committee (UHC). The Faculty Senate shall select one-third of the UHC membership annually in the regular February meeting of the Faculty Senate for service beginning in the next academic year. These faculty members shall be nominated by their College Council, which shall send two names annually to the Faculty Senate Office by February 1st. At least three of the twenty-four faculty members shall be from each college. (Replacements, where necessary, shall be appointed by the Faculty Senate Executive Committee [FSEC] or filled by the Faculty Senate at the next annual appointment period.) A faculty member who is elected to the UHC may be re-elected to successive terms.

It might be helpful to clarify the replacement issue. Does a replacement selected by the FSEC serve the remainder of the replaced faculty member's term, or just until the next regular selection period?

CP Comment: Since the replacements are appointed, not elected, I feel they should serve until the next annual appointment period.

Also, during summers, many UHC members are unavailable because of travel or other commitments, and this can be problematic, especially if two or more panels must be assembled. Can the FSEC select summer replacements for UHC members who are just temporarily unavailable?

Notes from meeting: Logistical problems of cases running several months, sabbatical,

Would a 3 person panel be appropriate instead of 5? Will this impeded breath of representation?

CP Comment: I prefer a 5 person panel. Yes on FSEC selecting summer replacement personnel once confirmation is documented that the regular panel member will be unable to attend.

12.4.1.2. University Hearing Panel

From the 24-member UHC, a five member University Hearing Panel (UHP) shall be selected by the Faculty Senate Executive Committee and empanelled by the APRC as needed. The faculty member and the administrator may request to replace up to three of the selected panelists prior to the first meeting of the UHP.

An orientation of the University Hearing Committee shall be conducted by the APRC and General Counsel annually. UHP decisions must be supported by a majority of the panelists.

No current recommendation

12.4.6. Report

The UHP shall prepare a written report divided into findings of fact and recommendations with supporting reasons. The report shall be presented to the Provost and the faculty member within five business days of the conclusion of the hearing. A minority report may also be prepared.

Note that this report does go to the Provost. It should probably also go to the administrator against whom the grievance was filed.

CP Comment: Yes

Chapter 13 issues:

Dr. Biagioni wrote, *“The key issue of concern specific to Chapter 13 involves what appears to be a requirement that the President be present as a participant in any PPRP where dismissal is considered as a sanction. The first section shown here, from Chapter 12, is provided to show the contrast in language between the two chapters.”*

12.4.4. Hearings

The formal hearing may involve one or more meetings at which witnesses may be examined. Each party shall provide the names of its witnesses to the other party and the UHP in advance of the hearing. The administration and the faculty member will each be allowed to present an opening statement without interruption and orally question the witnesses and parties. The UHP may also orally question the witnesses and parties. The administration and the faculty member may be represented by counsel, but counsel is not permitted to question the witnesses or parties. **If the University is the only respondent, the President will designate a representative who will be allowed to present an opening statement and question the witnesses and parties.** The Missouri Rules of Evidence need not be followed, but the UHP will base its finding on only reliable evidence. A verbatim record of the hearing will be taken and made available to the parties at the University's cost.

In this section of Chapter 12, it is clear that the President need not participate directly in the APGP hearings, which makes sense. The language in Section 13.4.5 differs.

13.3. Initiation of Formal PPRP

The PPRP is initiated by a Department Head, Dean, Provost, or President if the conduct of a faculty member is considered sufficiently grave to justify imposition of major sanctions and attempts at resolution by informal negotiations have been exhausted. After discussing the situation with the faculty member, the administrator institutes the PPRP by preparing a written complaint and providing it to the faculty member. **Only the President of the University may institute the PPRP if a dismissal is a recommended sanction.** Exercising academic freedom of speech or political speech/affiliation shall not be grounds for dismissal or imposition of major sanctions.

Although the PPRP may be initiated only by administrators, faculty or staff may present allegations of unprofessional conduct against another faculty member to the faculty member's Department Head who should investigate and proceed appropriately. If the Department Head is unable to resolve the complaint, the person alleging the impropriety may take the matter to the Dean of the faculty member's college or the Associate Provost for Faculty and Academic Affairs. If none of the three administrators chooses to initiate the PPRP, the matter is considered resolved.

This section states that in cases involving dismissal as a possible sanction, the PPRP must be initiated by the President. This makes sense because of the President's role in the University. The requirement that the President initiate the process confirms the President's knowledge that the step is being taken

and that the President would be willing to present the request for dismissal to the Board of Governors. However, to a great extent, the President is essentially a figurehead in the process – the rationale for dismissing a faculty member is provided primarily by the administrator initiating the PPRP and by the Provost. See next section.

13.4.5. Hearing

The formal hearing may involve one or more meetings at which witnesses may be questioned. Each party shall provide the names of its witnesses to the other party and the UHP in advance of the hearing. **The administrator initiating the PPRP and the faculty member will each be allowed to present an opening statement without interruption and orally question the witnesses and parties.**

The UHP may also orally question the witnesses and parties. The administrator and the faculty member may be represented by counsel, but counsel shall not be permitted to question the witnesses or parties. The Missouri Rules of Evidence need not be followed, but the UHP will base its finding on only reliable evidence. A verbatim record of the hearing will be taken and made available to the parties at the University's cost.

Section 13.3 mandates that the President file the PPRP in any case where dismissal is a potential sanction, and this section requires that the “administrator initiating the PPRP” be a participant in the UHP hearings. It would probably make sense to alter the language to make it more parallel to that of Section 12.4.4, i.e.,

Notes from meeting; “If the President has initiated the PPRP, the President may designate a representative to fulfill the role of the administrator in the hearings.”

CP Comment: Agree

Other potential issues with Chapter 13:

- In Chapter 12, the grievance process starts by submission of a written complaint to the Faculty Senate Office, so at least the Faculty Senate Executive Committee should be aware that there is a grievance process in the works. There is no parallel language in Chapter 13 – a PPRP can be initiated without the Faculty Senate Executive Committee’s knowledge.
- In Chapter 15, section 14.5.1 describes dismissal procedures. This language should be carefully compared to that in Chapter 13 to check for consistency.

NEW BUSINESS

Refer to upcoming business