

Report of the Committee on Judicial Review March 7, 2023

On February 24, 2023, the Chair of the Faculty Senate, Dr. Mike Hudson, gave the Committee on Judicial Review (CJR, with members Dr. Tom Dicke, Dr. Cindy Macgregor, and Dr. Cameron Wickham, chair) the following charges:

1. Considering past practice of the Graduate Council, Faculty Handbook policy 1.4.2.3, Robert's Rules of Order, the purpose of other Faculty Senate committees/councils, and the need to have an efficient process for managing curriculum while also protecting faculty rights and the power of the Faculty Senate:
 - a. Do you interpret bylaw ART V SEC 3 as empowering the Graduate Council and/or its subcommittees to make and/or recommend policy and/or policy changes directly to the Dean of the Graduate College or other university administrator without it being approved first by the Faculty Senate?
 - b. If ART V SEC 3 does not empower the Graduate Council to address these policy issues, does ART V SEC 3 allow the Graduate Council or its subcommittees to be an informal advisory committee (i.e., without approval to formally speak on behalf of the Faculty Senate) to the Dean of the Graduate College, or other university administrator, on policy matters?
 - c. If ART V SEC 3 does not empower the Graduate Council to make and/or amend policy, do you foresee any issues within the *Bylaws of the Faculty* for other committees and councils of the Senate to direct questions about making or amending specific policies to the Committee on Policy Review?
 - d. If ART V SEC 3 does empower the Graduate Council and/or its subcommittees to propose policy and/or policy changes directly to the university administration by way of the Dean of the Graduate College, please propose language to amend the bylaw to clarify this authority of the Graduate Council.

Background.

At the January 2023 Graduate Council meeting, a task force they had formed presented 2 policies regarding graduate education they want to amend: [Grading and the Credit Point System](#) and [Grade Requirements](#). The task force and the Graduate Council want to propose specific language to change these policies. Their plan for doing this is to provide these policy changes to the Graduate College Dean and ask the Dean to bring the change to the Provost so it can be changed in Administrative Council. The Graduate Council Executive Committee thinks the Constitution and Bylaws of the Faculty empowers the Graduate Council to so advise the Graduate College Dean to go forward with the recommended policy change, while Chair Hudson thinks the Constitution and Bylaws of the Faculty does not give them the authority to do propose policy changes without involving the Faculty Senate. ART I SEC 9B(6)(a)(aa) states that the Committee on Judicial Review "Shall adjudicate in questions of interpretation of the *Constitution and Bylaws of the Faculty*."

Conclusions.

The CJR met February 28, 2023 to address the charges and arrived at the following conclusions.

Charge 1(a). ART V SEC 3 of the Bylaws outlines the operation and specific duties of the Graduate Council:

The Graduate Council is empowered, for courses numbered 600 or higher, for graduate degree programs, for graduate degrees, and for the general requirements for graduate certificates, to recommend approval of a curricular proposal from an academic department or special academic program or to reject and return a proposal to the originator. If so charged by the Senate Chair, the Graduate Council is also empowered to initiate curricular proposals to add graduate degrees, delete graduate degrees, modify the requirements for existing graduate degrees, and modify the general requirements for graduate certificates, or to investigate the merits of such a proposed change and initiate a curricular proposal at its discretion. It must approve all members of the graduate faculty. Other responsibilities include program planning, curricular control, and policy-making for the Graduate College.

The section speaks to the standing charges of the Council. The primary charge of the Council is to review and approve or reject curricular proposals, and other standing charges include policy-making. However, these standing charges fall within the authority of the Faculty Senate. The authority of the Faculty Senate is evident especially when the Bylaw is interpreted in light of ART I SEC 10, which sets the definition, duties, and responsibilities of the Councils of the Faculty Senate:

SEC 10 Councils of the Faculty Senate

A Definition and Duties of Councils

Councils of the Faculty Senate are elected bodies that are an integral part of the Senate. Councils are empowered by the Senate to review curricular proposals and either reject them or recommend their approval to the Senate. Some Councils have secondary functions outside of the curricular process. The Councils of the Faculty Senate include the College Councils (one for each discipline-based undergraduate college), Graduate Council, the Council on General Education and Intercollegiate Programs (CGEIP), and the Educator Preparation Provider Council (EPPC). The establishment, operation, and specific duties of these Councils are described in Articles II-V of the Bylaws.

B Council Responsibilities

Councils of the Faculty Senate shall be responsive to the will of the Senate. Councils shall discharge responsibilities assigned in standing charges as designated in the Faculty Bylaws or in special charges designated by the Faculty Senate or its Executive Committee. Faculty Senate Councils may initiate special charges only with the approval of the Executive Committee of the Faculty Senate.

C Council Actions

Council Actions include all formal recommendations or decisions made by a Council in response to its charges. Council Actions include rejections of curricular proposals, recommendations to approve curricular proposals, and all formal recommendations and decisions made while engaged in non-curricular duties.

D Challenges and Appeals of Council Actions

The ranked faculty of the University shall have the inherent right to challenge and appeal Council Actions as described in ART VII SEC 2 and ART VII SEC 3 of these Bylaws.

In particular, the first sentence of ART I SEC 10 B states that the “Councils of the Faculty Senate shall be responsive to the will of the Senate.” This section implies that any recommended policy changes determined by the Council should not be made directly to the Dean of the Graduate College or other university administrator without first going to the Faculty Senate or its Executive Committee for approval. In addition, ART I SEC 10 C states that any such direct recommendation made is a Council Action, and ART I SEC 10 D gives ranked faculty the right to challenge and appeal such actions. A policy recommendation made without Senate approval would likely inhibit this right.

The CJR answer to charge 1(a) is no.

Charge 1(b). ART I SEC 10 A implies the primary function of the Graduate Council is to review curricular proposals, with some secondary functions outside the curricular process. ART VI SEC 2 outlines the curricular process

SEC 2 Definitions and Structures in Curricular Process

A For the purpose of this document, curricular proposals include proposals for:

- (1) New degree or certificate programs
- (2) New options within an existing degree or certificate program
- (3) New courses
- (4) Changes in any of the above
- (5) Changes to degree or certificate policies and requirements
- (6) Changes to General Education program requirements

B Curricular matters shall be acted upon by the following bodies including such internal structures of each named body as may be established for dealing with their specific curricular matters:

- (1) Academic departments or special academic programs
- (2) College councils
- (3) Academic deans
- (4) Graduate council
- (5) Education Preparation Provider Council
- (6) Council on General Education and Intercollegiate Programs
- (7) Secretary of the Faculty
- (8) Executive Committee of the Faculty Senate
- (9) Faculty Senate
- (10) University administration

On curricular and academic policy matters, the CJR determined that the Graduate Council cannot informally advise the Dean of the Graduate College, or other university administrator without the policy being acted upon by the Faculty Senate Executive Committee or the Faculty Senate. The CJR determined that the policy-making responsibility for Graduate Council indicated in Art V SEC 3 would

include informally advising the Dean of the Graduate College on non-academic policies for the Graduate College.

Charge 1(c). As noted above, the primary function of the Graduate Council is to review curricular proposals, and curricular matters shall be acted upon by the Faculty Senate. ART VI SEC 2 includes as curricular proposals any changes to degree requirements. The CJR determined that such proposals from the Graduate Council need to be sent to the Faculty Senate Executive Committee, who can then act upon the proposal, send the proposal to the Faculty Senate, or to another Senate Committee whose charges align with the content of the proposal. For example, for policy changes, the FSEC may send the proposal to the Committee on Policy Review. The Committee on Judicial Review suggests the Faculty Senate Chair consider asking the Rules Committee if the Bylaws are clear on this or if clarifications need to be made. The CJR also suggests the Senate Chair consider whether the duties of Council chairs include attendance and/or regular reporting at Faculty Senate meetings.

Charge 1(d). Since the answer to charge 1(a) is no, this charge no longer applies.

Report submitted on March 6, 2023 by the Committee on Judicial Review.

Dr. Tom Dicke,
Dr. Cindy Macgregor,
Dr. Cameron Wickham, chair.