MINUTES OF MEETING DATE: Wednesday, September 13, 2023, 3-5 p.m.

ATTENDANCE (X_ IN ATTENDANCE):
Sandra Warren__, Cynthia Deale _X_, Anne Ticknor X__, Susie Harris _X_
Wendy Sergeant_X__, Purificación Martínez_X__, Fan-chin Kung_X__, Jay Newhard,
X__Nancy Dias, X_Chris Buddo, X__Ryan Martin_X_Lisa Ellison_X_

Guests in attendance: Linda Ingalls, Rachel Baker

Call to Order, 3:00 pm

1. Approval of Minutes of August 30th, 2023, Meeting. Amendments proposed:
   o Lisa Ellison was not on the roster
   o Jay Newhard and Chris Buddo are on the PRR subcommittee
   o Revised minutes were approved

2. Work Plan for Academic Year (AY) 2023-24. [Martínez]
   o Purificación Martínez (Martínez) discussed the long to-do list with Rachel Baker (Baker) and Anne Ticknor (Ticknor).
     o They looked at Part VIII.
     o They looked at recommendations from UNC system on professional fixed-term faculty.
     o We will wait until October when Anne Ticknor (Ticknor) has more information for us from the UNC system.
     o We will continue working on part 12
       ▪ If we don’t finish today then do it at the next meeting.
     o The sub-committee on bullying has completed their work.
     o We will keep working on PRR and completed speech and the in October work on part 8, etc.
   o Ticknor noted that the compelled speech committee met, and with one more meeting will be ready to go.
   o Martínez said that sounds good and then we will have information from the UNC system.
   o Jay Newhard (Newhard) asked if the PRR process is on hold, too?
   o Ticknor said that yes, that process had been slowed down.

3. Discussion of Part XII
   o Martínez saw certain themes/topics emerging and that is why she put together a list of them.
     o Baker and Martínez met and consolidated things to present to the committee.
o She said that they have decided that the committee will look at those emerging themes instead of going through Part XII line-by-line at this time.

o Then Baker and Martínez can work on the draft based on feedback we get so as to revise Part XII.

o She asked the committee to see the document she circulated an hour ago and go through it and we can think about how to proceed.

o She said to look at items common to all grievances.
  ▪ One thing that they saw was that it is not consistent in terms of information that is present for each appeal type.

o Martínez led the committee through the items in the document:

o #1--Put the provision about “The Committee will endeavor to complete the review within the time limits specified except under unusual ….” in Section I and refer to each procedure.
  ▪ Martínez noted that we should move these items to section number 1 to general procedures and then we can refer to each of the procedures.
  ▪ Everyone agreed.

o #2--Make explicit that Chair of Faculty/Faculty Senate Office is copied in all communications. (Anne and Rachel will determine which of the two is better).
  ▪ Everyone agreed.

o #3--Stand on e-mail. Current practice: e-mail is only used for notification of the presence of a new documents on the Teams channel.
  ▪ This is the current practice; we all agree with #3 that email is not used for confidential information.

o #4--Add one paper copy provided by affected parties to all procedures.
  ▪ Martínez noted that this is not consistent all the time that the Faculty Senate office/Chair of the Faculty has to be copied about everything, etc. and we need to make it explicit.
    ▪ No concerns were expressed about #4.
    ▪ It was noted that there is a need to give a printed copy to the Faculty Senate office.
    ▪ Now we are reducing that to one paper copy instead of ten copies.
  ▪ Nancy Dias (Dias) asked if there is concern about storage and maintaining privacy or confidentiality.
  ▪ Baker assured us that there is the collection and destruction of the 10 copies, but they keep one copy for their records.
  ▪ Newhard asked why we couldn’t have all electronic copies.
  ▪ Baker said that a print copy is just in case the e-copy fails.
    ▪ They talk about electronic back-up, but not sure where to put it—on a backup drive, etc., so a paper copy could be back-up—so it feels a bit odd to go totally away from paper, but reducing it to one copy reduces it. She
is open to getting rid of it, but it cannot be her decision to get rid of paper totally. Her office is responsible for storage.

- Everyone was ok with keeping the paper copy

- #5—Replace “Vice Chancellors” with Provost. For procedures that involve fixed-term faculty members in Brody, instead of Provost is Dean of Brody? (Wendy)

  - Wendy Sergeant said that she would put designee for the dean at the medical campus in the wording.

  - Dias—asked whether similar wording for the College of Nursing but only Brody fixed-term faculty personnel matters go through the deans. All other fixed-term faculty personnel matters go through the Provost.

  - Sergeant said it could be the dean or executive dean.

- #6--Include guidance for training members of appeal panels (recommendation: a link in the Faculty Manual (FM) or a link on the Appeals website). Also include information in the FM on how often the training takes place.

  - Martínez thinks we need to include guidance about training--maybe a link to the FM or website
    - Also we should make the training time specific
    - Faculty Senate is going to have to reach out to university counsel to make this information substantial—this needs to be clear.

  - Ticknor thinks it is important to state that typically training occurs pretty quickly after the organizational meeting.

  - Baker noted that just a statement that once a steering committee is elected, they are given a training and they get training every year in case something changes.
    - Panels are generally trained as they are formed.
    - In some years, no training because they are trained as needed
    - The entire Appellate Committee is not trained in all the processes. Individual panels are trained as they are needed, for the specific appeal type of the case.
    - Codify in the Faculty Manual so everyone knows.

- #7--Role of advisor/counsel. It is different in all procedures; in some they are able to be present and speak, in others they aren’t. This is what the UNC Code says right now:

  a. Disciplinary/due process: the Code is clear that the faculty member has a right to counsel, and that counsel may participate in the hearing.

  b. Non-reappointment, denial of tenure, and denial of promotion, the supporting regulation states:

    i. “3. Counsel. Each constituent institution must decide whether to allow faculty members to have the assistance of an attorney or other advisor at the hearing and, if so, whether the advisor is permitted actively to participate in the hearing. Constituent institutions are discouraged from allowing attorneys to participate during the hearing. If, however, an attorney will be permitted to participate during the hearing on behalf of the
faculty member, then the campus should provide legal counsel for the respondent administrator. Legal counsel for the respondent administrator may be provided by in-house campus counsel, counsel from another constituent institution, counsel from the UNC System Office, a member of the Attorney General’s Office, or outside counsel.”

c. Financial exigency: not specified
d. Grievance: not specified

- Martínez noted that the role of counsel is different in all procedures. In others the advisor can be present but not speak, in others the advisor cannot be present. In some cases we talk about advisors and in others counsel. She asked Rachel to look into what is in the UNC Code.
- Baker found out that in the disciplinary hearings the faculty member has the right to counsel. In the UNC Code, very rarely does it mention “advisor.” It could be a lawyer but it could be a faculty member. In disciplinary actions the advisor has the opportunity to speak. For non-reappointment and denial of tenure and promotion, it is left to institutions to decide (See wording above).
- Martínez does not know why we created differences about counsel being present, speaking, not speaking, etc.
  - We have not had a serious discussion about this and because we have an opportunity we need to do so. For disciplinary action we need to do what the Code says. For others we need to establish what is appropriate.
- Newhard asked about why institutions are discouraged from allowing attorneys to speak during hearings.
- Ticknor noted it was there so there so there would not be a legal battle on campus.
- Martínez—Asked if we are okay with non-reappointment grievance about having these practices, as to whether one can have a lawyer or not, but lawyer/advisor cannot speak?
- Newhard wondered why we have this policy, as he thinks it might be necessary for the advisor to explain things. He thinks that the advisor should be able to speak.
- Chris Buddo (Buddo) said that he wonders if we allow lawyers to speak if it doesn’t create a trial situation on campus and sees reasons why we wouldn’t want to do that. He can see that in the non-reappointment where having counsel would be useful, but not having it be a trial would be wise, especially since there is a chance of litigation occurring after the campus process anyway.
- Fan-chin Kung (Kung) noted that if we let the lawyer speak, we can get more information.
- Martínez stated that she does not know if having the lawyer will prevent litigation so she doesn’t think either personally when we think about issues, we should think about litigation that might happen outside ECU, as thinking about litigation will get it us to a place where we can’t fix it.
- Susie Harris (Harris)—had the following question/comment is "can we find out why counsel/advisor have not been allowed to speak?"
Martínez said that she thinks it is because they want to avoid the hearings from becoming a trial as Ticknor said.

Dias observed that she understands the part about the trial, but wonders how that situation is different in a disciplinary action.

Martínez said it could be not meeting standards vs. as discipline, which seems more serious.

Linda Ingalls (Ingalls) noted that via the due process a faculty member who is tenured has property rights, but with the non-reappointment, tenure, promotion, etc., the faculty member does not have a “property right.” Property right vs. conferral of tenure, which is viewed as a review—that’s the difference in the property right status.

Newhard noted that the hearing is not supposed to be a trial, but it is a hearing whether we like it or not. His bigger concern is that some faculty members will handle this fine, and it will be less daunting than it would be for some. Another faculty member might need the assistance from advisor/counsel and if he were in that situation, he would want them to speak on his behalf.

Lisa Ellison (Ellison) agreed with Newhard, noting that the majority of faculty are not well versed in university policies and would need someone beside them to help them.

Dias noted that as much as we need to protect the institution, we need to protect the faculty, too. There will be faculty who may not know what to say and might look for a counsel for disciplinary procedures and due process.

Martínez reminded everyone that the FGC makes recommendations to the Faculty Senate and the Senate makes recommendations to the chancellor and the chancellor makes the final recommendations.

- She noted that our recommendation would be a break in the practice and chancellor might agree or disagree
- Kung said it is better for panels to have the full information that an attorney can help someone get.

Newhard made a motion to align the non-reappointment, denial of tenure, and denial of promotion stance on attorneys/advisors with the due process stance, and it was seconded.

Martínez asked for more discussion about the item.

Buddo noted that denial of tenure is an academic process—there are faculty on both sides—so we want to be sure that we are protecting all faculty.

Ticknor noted that with the new grievance policy that it can only be against a supervisor, not a Tenure/Promotion/Reappointment committee for example; the faculty member would be grieving the chair or above, but not a fellow faculty member.

Buddo asked if that is the case with non-reappointment.

Martínez noted that she thinks you can grieve against faculty committees.

Baker said that we have not had an appeal of this type (non-reappointment, denial of tenure, denial of promotion) since she’s been here, but either way she guesses that the question really comes down to whether people in that situation should have recourse to an attorney or not. The disciplinary process may also arise from groups of faculty or when a
faculty member has gone to a chair to complain and action is taken against another faculty member as a result.

- She noted that a language barrier could prevent a faculty member from being able to provide or respond to testimony on the fly, and that is something else to consider.

○ The motion was voted on and the motion carried (on #3 counsel).
  ○ There were 6 in favor of making the language consistent and 1 against.

○ Newhard noted that in terms of financial exigency, counsel should be present and allowed to participate.
  ○ He made a motion and it was seconded.
○ There was no discussion.
○ The motion carried.
  ○ 5 in favor and 2 against.

○ Newhard made a motion that we have same provisions that they are allowed to have advisor/counsel present and they can speak.
○ The motion was seconded.
○ Dias asked about the grievance and asked grievance, asking if it includes protected class, etc.?
○ Baker noted that faculty who want to pursue protected class go to OED and then if their case not taken up then they’d go through the grievance process. Another way these cases intersect with the grievance process is if a faculty member were punished for engaging in something where a penalty is imposed then you can pursue a due process claim to appeal the penalty (if it is a big enough penalty) or go through the grievance process if it is a smaller penalty.
  ○ She noted that we used to have a grievance board to handle the types of appeals that are now routed through OED but it was removed as more cases had to go through OED.
○ Sergeant noted that it may be beneficial to use “legal” in front of the word counsel so that if we are deciding that is the route, we are going to use legal counsel to make it clear.
○ Martínez stated that we should follow what faculty can do as counsel can be an advisor or a lawyer and the faculty member decides that so we can suggest exactly the language the UNC code uses.
○ The motion passed.

○ #8 -- In all other procedures, there are specifications about where the burden of proof rests, and whether the standard is “preponderance of evidence” or “clear and convincing.” There are no specifications about this in Financial Exigency. The Code is silent on what it should be. We should include this information on Financial Exigency (in consultation with OUC, perhaps?).
Martínez explained that the code is silent about what it should be and she thinks it should be included.

Ellison heard that university has to show the financial exigency.

Martínez said that however, the faculty member still has a right to have a hearing, and again it is making sure that we have systems that are cohesive. The burden of proof rests with the university and she would agree with that.

Martínez moved that we state in financial exigency that the burden of proof is with institution and is clear and convincing.

The motion was seconded.

Discussion—

Elison says she feels she is a bit out of her league

Martínez said that is what FCG is all about ...so welcome

She believes that this will have to be taken to office of university counsel; we are sharing what FGC thinks

Buddo had a process question—so if somebody has some kind of this type of grievance. Then for this particular hearing that faculty member would say that they got chosen for the wrong reason—that is what we are talking about—correct? He thinks that the university has to demonstrate why a person is chosen.

Martinez added that there needs to be a clear and convincing case.

The committee voted on the motion—the motion passed.

#9-In general grievances there is information about privileged information. This might be important in other procedures such as disciplinary/due process. Consider when/if it is necessary to include this information in other procedures.

Martinez noted that the purpose is to guide the Steering Committee or panel, but in disciplinary actions we do not provide guidance and that is inconsistent.

She made a motion and it was seconded.

The motion carried.

#10. Make procedures mirror each other as much as possible. Issues to consider:

e. Reasons for a panel to give extensions for submitting materials
f. Panel postponing hearing at request of parties

What materials need to be submitted before a hearing and when, names of advisors, etc.

h. Role of Chair of panel

i. Naming and numbering of exhibits

For #10 --Martinez talked about the need to have procedures mirror each other as much as possible.
Need consistency about materials that need to be submitted and when they need to be submitted, etc.

Not controversial just good practice.

Everyone was in agreement.

Questions to answer:

In General Grievances, there are minutes assigned to how long an affected party can speak. Should this be common to all?

Should each party get an equal amount of time to present their case on a hearing agenda, or if one party has a lot of witnesses and the other has none, should the party with witnesses get an equal amount of time per witness? (10 minutes per witness vs. 1 hour for all witnesses, for example.).

For the 2 questions above—about general grievances

Martínez—said that at the end of a hearing there is an indication of time and yet in others there is no time limit given. Should we have a common time limit or no time limit?

Newhard asked--what are risks if there is no time limit?

Martínez said that a faculty member may speak for an hour.

Newhard asked how long will they filibuster?

Dias said that she thinks whatever we decide should be common for all.

Buddo—said that he is with Newhard—people should make their case, I do not understand why we should limit any of them, perhaps they could go on forever maybe, but they should be able to present their case.

Ellison noted that she thinks the time limit is important--she has been to lots of local government meetings and thinks time limit is important, but all people should have opportunity to speak.

Kung had practical questions, and asked do we have people go over time? Do we need to have a time limit practically?

Ticknor said she’s seen it in Faculty Senate and thinks a time limit is important.

Dias asked what is known in the past and in actual legal settings is there a time limit?

Martínez said that she could give us a horror story; she was in an appellate committee meeting for 23 consecutive hours.

Newhard said that he is thinking if we have to have limits then they should be permissive and asked what should the time limit for speakers be? 30 minutes? Is that reasonable?

Ticknor noted that they ask speakers at the faculty senate to limit it to 10 minutes, but there are times when they speak longer.

Baker noted that for these sorts of situations the time limit was on closing statements so a faculty member has had time earlier in the day to make their case.

There is time in the beginning to lay out general features of a case, the respondent talks, then witnesses, etc., questioned, so this is not the only time for them to make their case. However, anything that may come out during witness testimony etc. they can comment on and cap off the day’s proceedings. The usual goal of a panel chair is to get this done in a day due to faculty workload and court reporter etc. They want everyone to have the same time for a closing statement.
Martínez asked if it should be 10 minutes? Or no limit?
Buddo stated that he can withdraw his earlier comment due to what Baker said, but 10 minutes seem short.
Newhard asked if there is any way of knowing if 10 minutes is long enough.
Baker said she supposes transcripts could be reviewed to see that from past cases.
Harris said it really depends on the person, sometimes it could go on and on.
Kung noted that a summary statement for 10 minutes would be okay, but may need longer.
Martínez asked if we need to extend it to 15 minutes, and therefore, amend the motion.
Dias supports a time limit, but 10 seems too short
Dias made a motion to increase the time limit to 15 minutes.
Motion was seconded
The motion carried
  With 8 in favor
  Therefore the time limit has been increased to 15 minutes.

Baker asked if you get an hour to present your witness or a time limit for your witnesses, for example one party may have 10 witnesses and another has one witness.
  The witness time limit issue is a common issue with any panel
Ellison commented --what about the minimum time for each side—for example, 30 minutes per side.
Newhard comments that it could be 10 minutes per witness with a 90 minute cap on witnesses time.
The time of 60 or 90 minutes was mentioned.
Martínez thinks 90 minutes is better.
A motion was made to allow each party to get 10 minutes per witness with a maximum of 90 minutes.
The motion was seconded
Discussion --
  Kung said he thinks there should be a maximum of 10 minutes per witness.
  Dias noted that there could no more than 9 witnesses in the time as a suggestion.
  Newhard said that looking at the math and how it works out—it would be up to 10 witnesses and 100 minutes? Is that the idea?
  Dias noted that each witness can speak for up to 10 minutes at the maximum.
    Dias wrote in the chat: witness gets no more than 10 minutes and each grievant can get up to 10 witness but within the 90 minute timeframe.
  Baker said that it is not necessarily that witnesses are speaking a certain amount, but that they are being questioned and provide answers within a specific timeframe. Witnesses are questioned by up to 7 people (the respondent, grievant, and 5 panel members).
She asked, do you give them each the same amount or they can’t exceed a certain amount of time, etc.?
- The practice has been to try to give them equal amounts of time.
- Some people only have one witness while others have a lot of witnesses.
- Most panels are being assigned equal time
- Each get these blocks of time to present evidence.

- Ellison asked Baker --did you say the total amount of time that is spent?
- Baker said an hour to an hour and a half total time and trying to take about 10 minutes per witness.
- Ellison liked the time limit, but the flexibility within that time. She made a motion for each party to have up to 90 minutes for witnesses to present
- The motion was seconded.
- Discussion--
  - Buddo asked --are we doing more than necessary, instead of leaving it to the panel to make these decisions about the agenda?
  - Baker noted that this comes up every time they make an agenda
  - Newark asked--do we need to clarify regardless of the number of witnesses?
  - The answer was -Yes.

- The motion carried

- More on general grievances
- The item was--Reconsider eliminating Conflict Resolution as part of the grievance steps. Faculty can opt in or out of Conflict Resolution. The grievance will begin with a petition for redress (now step 2).

- Martinez said to go into the files and look at the general grievances.
  - In general grievances there are many steps, 1,2,3,etc.
  - When she was chair of faculty there were a lot of problems establishing the deadline for grievances
  - Her idea is that we don’t make as part of the grievance the possibility of consulting or doing an informal consultation with the ombudsman.
  - We say the grievance starts when the petition of redress starts
  - Instead of Step 1 being informal resolution/mediation, Step 1 is the filing of the Petition of Redress is what we recommend
  - That means we will not mandate somebody to meet with the ombud or engage in informal resolution.
  - We give the faculty the opportunity, but they can say no.
- Martinez—made a motion that a Grievance starts with the petition of redress.
- Buddo said he is in agreement.
- Newhard asked--Buddo can you say more? We want the grievance process not to be overburdened.
o Buddo said that in his experience the grievance the party has already had the interaction and to force them to face that person again has been really difficult and, in some cases, it has discouraged grievances and then he thinks the grieved person does not feel heard. He thinks using the ombud to alleviate the process makes sense, but to mandate that is hard.

o Ticknor said that she would agree and add that faculty have come to her to talk about the grievance process and options such as resolving a conflict with a supervisor. She would go with what Buddo says.

o Martínez said she experienced it as well when she was chair of the faculty.

o Martínez noted that we have a motion and a second.

o The motion carried.

o A question was asked--If faculty uses Ombuds, can the Ombuds ever be called as a witness and can statements made while working with the Ombuds be used as evidence in a proceeding?

o Ryan Martin (Martin) said that they should be able to use that as evidence or it should be known that it could be used against someone in a hearing.

o Newhard said that if there was an issue that they need to be warned about it, but that this undermines the purpose of ombuds.

o Martínez agreed with Newhard.

o Dias was wondering if it is only that it would be something that could be used against or also for a grievant and she also agreed with Newhard.

o Buddo said that if the goal is to use a liaison and then if they think it will be used against them, they will never use ombuds.

  o Buddo proposed a motion that statements made to ombuds cannot be used as evidence and ombuds cannot be called as a witness

o Newhard asked if there was any reason to think an ombuds should be a witness.

o Baker said that in grievances filed while the ombudsman has been here the inclination for some parties is to use that information--statements made in those talks have shown up in petitions for redress. So parties are prone to using these statements to bolster their claims.

  o We need to decide whether it is allowed or not so they can be coached one way or the other.

  o Natural inclination is that it is considered fair game.

  o It has come up.

o Newhard asked if the meeting is with both parties is that admissible?

o Martínez said that someone goes to the ombud with idea that all that is confidential, so she is worried that the ombuds would be asked to be a witness.

  o Confidentiality is needed.

o Ellison said that she does not have a lot of clarity about how the ombud functions.

  o She knows that in legal cases their lawyer can be a witness and the doctor can be a witness.
Baker noted that the question has been raised about whether something that was discussed in the ombuds office can be included in the information submitted for a grievance.

If you are meeting in front of another colleague and the respondent or grievant says something, it is fine, but that same statement made in front of the ombud is suddenly off limits. It is treated like the more formal mediation process that is offered later in the appeal steps, but at this point in the appeal, it is supposed to be an informal process. Maybe it is because of certain assumptions about the role of the ombuds. It is interesting and hard to decide one way or another, If it undermines the purpose of the ombuds, that is a pretty compelling argument not to do it, but it may mean that grievants do not have recourse to present information that would bolster their claims.

Martínez said that she thinks the decision is still pending. She would like to get in touch with the ombuds to get his thoughts on this item.

Martínez thanked the committee.

The meeting was adjourned at 5:11 p.m.