

BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM

COMMITTEE REGARDING FACULTY/ACADEMIC STAFF DISCIPLINARY PROCESS

Minutes of the Meeting

December 15, 2005

10:20 a.m.

Pyle Center, Room 220

702 Langdon Street

Madison, Wisconsin

Committee Members Present: Regent Michael Spector, Chair, General Counsel Patricia Brady, Professor Walter Dickey, Chancellor David Markee, Regent Peggy Rosenzweig, and Regent Brent Smith

Committee Members Unable to Attend: None

Others Present: Scott Sager, Legislative Audit Bureau; Bill Steffenhagen, Academic Staff Professionals Representation Organization; Russ Whitesel, Legislative Council Senior Staff Attorney; Pam Matthews, Assistant to Representative Sue Jeskewitz; Richard Schauer, The Association of UW Professionals; Kevin Kniffin, American Federation of Teachers; and Margaret Lewis, UW Associate Vice President

Regent Spector began the meeting by reporting that he had given a status report on the committee's progress to the Board of Regents at its December 9th meeting.

General Counsel Brady distributed two draft documents on possible amendments to Chapter UWS 4, *Wisconsin Administrative Code*, that she had prepared in response to discussion at the last meeting. Both drafts identified "days" as "working days" throughout the documents and added serious child sex offenses to the definition of Criminal Misconduct in s.UWS 4.11(2).

Draft #2 also incorporated as a second tier of misconduct that could warrant suspension without pay and the expedited disciplinary process cases in which the "provost finds that there is a substantial likelihood that the faculty member has engaged in behavior that poses a substantial risk to the safety of others."

As pending questions, Ms. Brady listed the following:

- o Crimes to be included in the list of serious crimes set forth in s.4.11(2)
- o Basis for removing an investigator
- o Whether to invoke the emergency rulemaking process to implement the proposed changes.

With regard to Draft #1, Regent Spector suggested that in s.4.09(2)(a) the wording be changed to provide that, when an employee is convicted of a crime identified in s.4.11(2), the provost would not need to make a finding of “substantial likelihood” and the person could be suspended without pay immediately. If the person is charged with the crime, but not yet convicted, the provost would need to find that there is a substantial likelihood that the faculty member engaged in the conduct as alleged in order to impose suspension without pay.

In s.4.09(2)(b), he suggested that the word “hearing” be changed to “meeting”.

Professor Dickey agreed and suggested that, when criminal charges are pending, the faculty committee, provost, and chancellor be given the option to continue the matter until further information becomes available. In that regard, he noted that prosecutors frequently do not allow witnesses to talk with university investigators while charges are pending. The person charged with the crime could be suspended without pay pending the outcome of the case.

Ms. Brady agreed, noting that in many cases information has been withheld because law enforcement was unwilling to risk compromising their prosecution of a case in order to assist in the university’s investigation.

In response to a question by Mr. Whitesel, Professor Dickey indicated that he had asked for alternative drafts for the committee’s consideration so that one of the drafts could include a second category of crimes, in addition to the ones that would constitute just cause for dismissal per se, for which suspension without pay and an expedited disciplinary process could be invoked.

Mr. Whitesel questioned the need for a “per se” category, suggesting instead a single trigger for possible use of the expedited disciplinary process, such as charge or conviction of a felony.

Professor Dickey explained that the standard applied for dismissal in the two categories would be different. While certain crimes would constitute just cause for dismissal per se, in other cases just cause for dismissal would have to be found.

Regent Rosenzweig and Ms. Brady felt that inclusion of all felonies would be overly broad.

Ms. Matthews cautioned that the rule making process is cumbersome and suggested that it would be helpful to have some flexibility in the definition of crimes that could warrant suspension without pay and the expedited process in the event that some serious crime might be omitted in formulating the definition.

With regard to the second tier of crimes, Professor Dickey noted that the intent was to make crimes that are not in the “per se” category but that might constitute a threat to safety subject to suspension without pay and the expedited disciplinary process. The challenge, he pointed out, would be to draft language in such a way that free speech would not be threatened. If any felony would permit suspension without pay and use of the expedited process, he cautioned that guidelines would be necessary to advise decision makers about when to invoke those measures.

Regent Smith expressed support for the language in draft #2.

In response to a question by Regent Spector, Mr. Whitesel explained that there could be one disciplinary process with a range of options, including the expedited process. Professor Dickey added that the expedited process would be available for charge or conviction of a felony, but it must be used for heinous felonies. It could also be used for other crimes that pose a danger to the community.

Regent Spector thought that specifying the heinous crimes would help to assure faculty that suspension without pay and the expedited process would not apply to minor offenses.

Mr. Whitesel suggested drafting a separate *Administrative Code* chapter for the expedited process, and there was agreement with that recommendation.

With regard to the second category of felonies, Regent Spector noted that there had been discussion of including crimes that threaten the credibility of and trust in the university, as well as those that pose a risk to safety. He noted, however, that such a section would need to be written carefully so that it would not open the door to possible abuse.

Regent Rosenzweig asked how one could articulate what would fit into this third category.

In response, Professor Dickey suggested that there could be two main categories. The first would be heinous crimes that constitute just cause for dismissal per se. In the second category would be crimes that are felonies and that threaten the safety of the community or that undermine the legitimacy of the university. It could be specified that all three criteria would need to be met for crimes in the second category to warrant the expedited process and possible suspension without pay.

Ms. Matthews suggested that the rule provide that “per se” heinous crimes shall warrant suspension without pay and the expedited process, and that second category crimes also may warrant those actions.

Regent Rosenzweig asked if faculty and staff representatives at the meeting had any comments on these suggestions.

Professor Schauer said that he did not want to react at that time because of lack of clarity about the definition of category two crimes, as well as lack of clarity about the term “substantial likelihood” and the powers of the provost.

None of the other observers had comments at this point.

Professor Dickey suggested that he, Ms. Brady, and Mr. Whitesel constitute a subcommittee to prepare draft rules that could be considered by the committee in January and that would be circulated in advance of the meeting. The committee’s recommendations could be brought to the Board of Regents in February.

There was agreement with that suggestion.

Chancellor Markee expressed concern about whether a second category would be needed. He felt that such crimes could be handled through the existing process.

As examples of crimes that might fit into the second category, Professor Dickey cited stalking that could be pose a threat to safety and stealing in amounts and manners that could damage the legitimacy of the university.

Mr. Whitesel noted that the expedited process would be for exceptional crimes. Most would be handled through the regular disciplinary process.

Chancellor Markee suggested that, in order to trigger availability of the expedited process, there should at least be a criminal charge, not just a claim that a crime had been committed.

Professor Dickey did not believe that the expedited process would be used often because crimes would need to be heinous or to meet specific standards in order to trigger it.

Regent Rosenzweig and Regent Spector commented that crimes such as grand larceny and embezzlement would among those for which the public might reasonably expect suspension without pay.

In that regard, Mr. Whitesel suggested that the standard for triggering availability of the expedited process and suspension without pay for crimes in the second category might be that the crimes are felonies and either pose a risk to safety or threaten the legitimacy of the university.

Professor Dickey indicated that alternative language could be presented for the committee's action at the next meeting.

In response to a question by Ms. Lewis regarding the committee's proposed time line, Regent Spector said that his intention was to bring recommendations to the Board in February and then take the proposed rules to the governance groups for input.

It was agreed that the committee would meet again on January 25th.

Regent Spector advised the committee that he would send a letter to the Co-Chairs of the Joint Audit Committee, the leadership of both houses of the Legislature, and the Chairs of the Higher Education Committees advising them of the committee's progress.

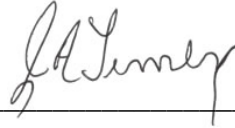
As a revision to the minutes of the November 29th meeting, the words "at which time" were replaced by the word "and" in the sixth line of the second paragraph on page 2. With that change, the minutes were approved, upon motion by Ms. Brady, seconded by Professor Dickey.

With regard to whether the emergency rule-making process should be invoked with respect to the proposed changes, Ms. Brady noted the importance of first obtaining shared governance input, and Regent Rosenzweig asked that the committee continue to consider this process as a possibility.

In response to a question by Mr. Whitesel as to the Regent role in the expedited process, Ms. Brady indicated that the Board of Regents must act on dismissal recommendations and that hearing from the parties is important in making that decision.

Regent Rosenzweig added that it should be the full Board's responsibility to meet and take action on these important matters.

Discussion concluded and the meeting was adjourned at 11:30 a.m.

A handwritten signature in cursive script, appearing to read "J. Temby", is positioned above a horizontal line.

Judith Temby, Secretary