

BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM

COMMITTEE REGARDING FACULTY/ACADEMIC STAFF
DISCIPLINARY PROCESS

Minutes of the Meeting

November 11, 2005

1:30 p.m.

Van Hise Hall, Room 1511

1220 Linden Drive

Madison, Wisconsin

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

Committee Members Unable to Attend: None

Upon motion by General Counsel Brady, seconded by Professor Dickey, the minutes of the November 3, 2005 meeting were approved.

A paper was distributed on alternatives for improving the disciplinary process, formulated by Regent Spector and Ms. Brady following discussion at the November 3rd meeting.

Professor Dickey noted the suggestion made at the last meeting that there be an expedited process for egregious situations that would be separate from the regular disciplinary process, which would continue to be used for other matters.

With regard to initiation of the process, the paper pointed out that beginning the disciplinary process where criminal conduct may be in issue can be difficult since the administration may not learn of the alleged misconduct in the ordinary course of business. Possible responses could include requiring that a faculty or academic staff member charged with or convicted of a crime report that fact to his/her department chair or supervisor who in turn would convey it to the provost or chancellor.

Ms. Brady expressed support for having an obligation to report, and Regent Rosenzweig agreed, noting that the requirement would only apply to serious crimes.

Regent Spector asked if there was any discomfort with a reporting requirement, and none was expressed by Committee members.

Professor Richard Schauer, of the American Federation of Teachers, disagreed with the proposed requirement because he felt that it would require self-incrimination by affected faculty/academic staff.

Professor Ray Spoto, of the Association of UW Professionals, said that he would agree with such a requirement if it were confined to crimes that would cause danger in the workplace.

With regard to what should be reported, Regent Smith felt the list should be specific, so that employee discretion would not be involved.

Chancellor Markee felt the list should include such crimes as sex offenses and others involving safety and security on campus, but should not include all felonies.

Ms. Brady noted that a definition confined to danger to the campus community would not include other behaviors that threaten the credibility of the university, and Chancellor Markee suggested that those could follow the regular, rather than the expedited, process.

Regent Rosenzweig added that the requirement should include crimes that are a danger to the broader community, as well as the campus.

For inclusion in the expedited process, Professor Dickey suggested the following types of crimes:

- Those that would pose a danger to others
- Those that would impugn the honesty and trustworthiness of the offender and his/her fitness to be a faculty member
- Those that would injure the legitimacy of the university.

Chancellor Markee commented that those involving honesty and trustworthiness could follow the regular process if they would not endanger others.

Professor Dickey noted that a person charged with murder may or may not be a danger to others. Even if not, the expedited process would be justified because public trust would be damaged by having someone charged with murder on staff.

Professor Mark Evenson, of UW-Platteville, cautioned that a criterion of undermining the legitimacy of the university could be a slippery slope.

Professor Dickey added that care would need to be taken to protect freedom of speech and academic freedom.

Regent Spector indicated that the reporting requirement should include any crime that threatened a student or colleague, such as assault.

Professor Schauer commented that a person engaged in felonious behavior would be unlikely to comply with a reporting requirement.

Regent Spector asked if the requirement should apply to being charged with a crime or should apply only if the charge resulted in a conviction.

Professor Spoto said that he would favor conviction, since a person could be found innocent of a charge.

Ms. Brady noted that a charge and conviction often are separated by a considerable period of time.

Regent Spector thought that the list might differ for charges and convictions; for example, it would be necessary to report a charge of murder, but only a conviction for a crime like shoplifting.

Professor Dickey thought that a list of specific offenses, such as murder, sexual assault, armed robbery, and sex offenses involving children might be needed, although it would be important to have some discretion. The process would have to be fair, so that a person would not be dismissed based only on being charged with a crime.

Regent Rosenzweig said that the expedited process would only apply to serious crimes involving a threat to the community and reputation of the university.

Regent Spector said that for the next meeting a list would be prepared of crimes that would have to be reported.

The alternatives paper identified another issue involved in initiation of the disciplinary process as whether the chancellor or provost should have sole authority to begin an investigation or whether there should be some level of consultation with governance groups and whether it is preferable to have the chancellor or the provost responsible for the decision to commence an investigation.

Professor Dickey expressed a preference for consultation with a governance group if the consultation could take place within three days.

Ms. Brady noted that UW-Madison rules call for the provost to commence an investigation, since the chancellor is the decision maker in the disciplinary process. She asked if the provost should have that role at all institutions.

Chancellor Markee felt that the provost should be charged with commencing investigations, and Regent Spector concurred.

In response to a question by Regent Rosenzweig, Professor Dickey said that two of the three recent cases at UW-Madison would fit the definitions being discussed for crimes that would warrant the expedited process. The one that involved stalking would not.

Ms. Brady noted that eliminating the need to wait for a complaint to be filed before beginning an investigation would require administrative rule making.

Russ Whitesel, Senior Staff Attorney for the Legislative Council, added that it could be a separate rule, rather than an amendment to existing rules.

Professor Evenson asked if there would be faculty participation in any rule changes, and Regent Spector replied in the affirmative.

Returning to the alternatives paper, Regent Spector indicated that one option would be to suspend a person accused of certain offenses without pay.

Professor Dickey expressed support for suspension without pay in the case of a person charged with a serious offense if there is substantial likelihood that the person committed the crime.

In response to a question by Regent Rosenzweig, Professor Dickey explained that one would reach that conclusion by investigating and gathering facts, after which a decision would be made as to whether the standard is met. In that process, the investigator would examine the criminal complaint and police reports; and the person accused would have an opportunity to be heard.

Regent Spector added that the accused person could be represented by counsel.

Mr. Whitesel asked if decisions on suspension without pay would go to the Board of Regents, and Regent Spector replied in the negative.

Mr. Whitesel asked if the reporting requirement would apply to crimes committed in the past, and Regent Spector responded that application of the rule would be prospective.

Professor Spoto commented that if the person were found to be innocent, he or she would have to be reinstated with back pay.

Professor Schauer remarked that back pay would not be adequate, since the person also have incurred attorney fees and other expenses. He felt that denial of pay would be unfair and would impair the ability of the accused to mount a defense.

Mr. Whitesel asked what would happen if the upcoming Legislative Audit Bureau audit turned up serious crimes that had been committed in the past; and Regent Spector said that he did not think the expedited process would be used for past crimes.

The Committee then considered a time frame for an expedited process.

Professor Dickey felt that three days should be allowed for the provost to consult with faculty about beginning an investigation. He suggested shortening the current 10 days that UW-Madison allows for the accused to object to an investigation to two working days.

Professor Schauer noted that at UW-Whitewater there is no opportunity to object and that, at UW-Milwaukee, the Committee on Faculty Rights and responsibilities appoints the investigator and conducts the hearing.

With regard to conducting an investigation, Regent Spector suggested two weeks for an in-state investigation and three weeks if an out-of-state investigation is involved.

After completion of the investigation, Professor Dickey suggested a time frame of five working days for the chancellor to engage in consultation and decide whether to seek dismissal or other discipline.

Regent Spector suggested 14 days for the faculty committee to conduct a hearing and render a decision. The chancellor would have three working days to forward his decision to the Board of Regents.

In response to a question by Chancellor Markee, Regent Spector indicated that a decision on suspension without pay could be made after completion of the investigation.

Mr. Whitesel felt that a suspension also could be immediate.

Mary Matthias, Senior Staff Attorney for the Legislative Council, added that another option would be for the decision on suspension to take place after the hearing.

Mr. Whitesel asked if the person would have access to the campus following suspension, and Regent Spector replied that the person probably would not, particularly in the case of suspension without pay.

Regent Spector indicated that the issue of when to suspend without pay would remain before the Committee.

After the Board of Regents receives the Chancellor's recommendation, Regent Spector recommended a time frame of ten days for the Board to act. The total time frame for the expedited process would be 60 days.

The Committee then turned to the question identified in the alternatives paper of just cause, defined in terms of the nexus between the alleged misconduct and its impact

on a staff member's ability to carry out his or her duties or on the workplace more broadly.

Professor Dickey commented that the standard is vague and needs attention but that the nexus matter is not an issue in the types of serious crimes being considered for the expedited process. He felt that further definition of the nexus would be worthwhile but could not be accomplished by the December deadline for the Committee's report.

Mr. Whitesel added that the statute barring discrimination on the basis criminal conviction would not affect the serious cases being discussed by the Committee because the statute exempts those crimes substantially related to the work environment.

Regent Spector inquired as to the Committee's view about moving ahead with a dismissal before criminal conviction.

Professor Dickey thought that could occur in rare cases, if the faculty committee concluded that the accused did commit the crime. Mr. Whitesel recommended that the faculty committee make that conclusion a finding in its report.

Mr. Whitesel asked if the expedited process could result in discipline less than dismissal, and Professor Dickey replied in the affirmative.

After conclusion of the discussion, it was decided that the committee would meet next on Tuesday, November 29, 2005, at 2:00 p.m.