

BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM

COMMITTEE REGARDING FACULTY/ACADEMIC STAFF DISCIPLINARY  
PROCESS

Minutes of the Meeting

May 25, 2006

1:35 p.m.

Room 1511 Van Hise Hall

1220 Linden Drive

Madison, Wisconsin

Committee Members Present: Regent Michael Spector, Chair; General Counsel Pat Brady, Professor Walter Dickey, Regent Peggy Rosenzweig, Regent Brent Smith, Regent President David Walsh

Committee Member Unable to Attend: Chancellor David Markee

**Approval of Minutes**

Upon motion by Regent Rosenzweig, seconded by Professor Dickey, the minutes of the April 17 and May 16, 2006 meetings were approved as distributed.

**Consideration of Faculty and Academic Staff Governance Group Submissions  
Regarding Proposed Administrative Rules on Faculty and Academic Staff  
Disciplinary Process**

Regent Spector began the discussion by noting that he had asked General Counsel Brady to draft four alternative versions of proposed UWS 7, which had been distributed. The Committee's recommendation would go to the Board of Regents, which would decide whether to initiate rule making. That would include scheduling a public hearing and sending the draft rules to the Legislative Council for review.

Russ Whitesel, Senior Staff Attorney for the Legislative Council, added that the Council's review would involve matters of statutory authority and language. The public hearing would take place after this review is completed. The Board would then act on sending the draft rules to the Legislature for passive review, which means that the legislative committee to which they are referred would have 30 days to decide whether to hold a hearing and then 30 more days to hold it. The committee then could vote to refer

the rules to the Joint Committee for Administrative Rules, which could ask for modifications or could decide to let them stand as written.

Regent Spector indicated that, while some wanted the proposed rules referred back to governance groups, his preference would be to send them to the Board, with the public hearing providing a venue for further comments.

In response to a question by Regent Rosenzweig, Mr. Whitesel explained that, while the Ch. 227 hearing is held after the Legislative Council review, the Board could hold another informational hearing at any time, if it wished.

Turning to the alternative versions of the proposed rules, Regent Spector asked Ms. Brady to explain possible changes to s.7.02(4); and Ms. Brady indicated that the language would state that any actions required or permitted by ss.UWS 7.03-7.06 to be done by the chancellor may be delegated to the provost or another designee under institutional policies approved by the Board. The institutional rules could provide for this delegation in all cases or on a case-by-case basis.

Regent Spector then read the proposed change to s.UWS 7.04, which would state: “Any faculty member who is charged with, pleads guilty or no contest to, or is convicted of a felony under state or federal law shall immediately report that fact to the chancellor.”

Turning to s.UWS 7.05(8), Regent Spector indicated that the burden of proof would be changed from preponderance of evidence to clear and convincing evidence. Committee members expressed agreement with this change.

In response to a question by Mr. Whitesel, Ms. Brady indicated that the standard would apply to the entire termination process.

Regent Smith pointed out that s. UWS 7.06 sets forth a standard of “substantial likelihood” for suspension without pay; and Professor Dickey indicated that this is a higher standard which is appropriate because the chancellor would not at that point have all of the evidence.

There was agreement by committee members with that change.

Turning to s.UWS 7.02, Ms. Brady explained the differences among the four alternative drafts.

Draft 9 defined “Serious Criminal Misconduct” as “being charged with, pleading guilty or no contest to, or being convicted of a felony in a state or federal court” It retained the points of nexus to the university work place in the current draft rules.

Draft 10 incorporated the Committee’s current draft language in which “Serious Criminal Misconduct” was defined as “engaging in behavior that constitutes the commission of a felony.”

Draft 11a. incorporated the UW-Madison definition, including its nexus.

Draft 11b. also incorporated the UW-Madison definition, but retained the current draft's nexus. That section read: "Serious Criminal Misconduct means being charged with, pleading guilty or no contest to, or being convicted of a felony that involved:

- (a) Causing serious physical injury to another person;
  - (b) Creating a serious danger to the personal safety of another person;
  - (c) Sexual assault;
  - (d) Theft or criminal damage to property; or
  - (e) Stalking or harassment, and that
- 
- (a) Clearly poses a substantial risk to the safety of members of the university community or others; or
  - (b) Seriously impairs the public trust in the university and the university's ability to fulfill its teaching, research or public service missions; or
  - (c) Seriously impairs:
    - 1. The faculty member's fitness or ability to fulfill the duties of his or her position; or
    - 2. The efficiency of the colleagues and students with whom he or she works."

Professor Dickey stated his preference for Draft 11b.

Regent Smith indicated that, while he preferred Draft 10, Draft 11b would be his second choice.

Regent President Walsh remarked that, while he also had preferred Draft 10, he felt it was reasonable to compromise with governance groups who were uncomfortable with a definition focusing on behavior. Therefore, he would support Draft 11b. He was concerned, however, about the enumeration of crimes and whether some of the language might be overly broad.

In response to questions by Regent President Walsh, Professor Dickey said that sexual assault would include statutory rape and that creating a serious danger to safety would include crimes such as reckless homicide and reckless endangerment, as well as crimes like arson.

Regent Rosenzweig commented that Draft 11b is clear and understandable.

Ms. Brady felt it important to retain the Committee's nexus language in order to satisfy the substantial relationship requirement in the law prohibiting discrimination on the basis of a criminal conviction.

Stating his support for Draft 11b., Regent Spector suggested adding that the conviction could be in state or federal court and adding fraud and embezzlement to section (d).

Professor Richard Schauer, of the American Federation of Teachers, expressed his view that the nexus was overly broad. He thought that (a) should be deleted and the language added to the stalking and harassment section of the definition.

Professor Eric Schatzberg, UW-Madison, commented that section (b) of the nexus would be broad enough to encompass social protest crimes.

Professor Dickey noted that there would be discretion as to whether to invoke UWS 7 in any given case.

It was agreed by the Committee that the language should be further modified to better reflect in the nexus language impairment of the ability of students to learn, do research or engage in public service and the ability of faculty colleagues to fulfill their teaching, research and public service missions.

Professor Mark Evenson, UW-Platteville, felt that the two parts of section (b) should be separated, noting that public reaction to a crime could impair public trust in the university, but that the university could at the same time be capable of fulfilling its missions.

Professor Lawrence Kahan, UW-Madison, asked how the chancellor would measure impairment of the public trust in the university.

Regent Spector indicated that such crimes as fraud in handling scholarship funds might well impair the public trust.

In response to a question by Regent Spector, Professor Dickey explained that there often are plea agreements before charges are filed.

Professor Donald Downs, UW-Madison, expressed concern that the term “public trust” is too unqualified and that there would be no way to separate public trust from hysteria.

Professor Schatzberg suggested that, if the crime did not pose a risk to safety or undermine the ability of the university to fulfill its mission, it should be handled under UWS 4. An important purpose of tenure, he noted, is to protect faculty from shifting public opinion.

Ms. Brady noted that the Committee had declared its desire to satisfy a need for public trust in the university.

Professor Dickey remarked that there needs to be trust that chancellors and provosts would use good judgment in these matters.

Regent President Walsh noted, in response to faculty and academic staff concerns, the Committee had changed the definition of serious criminal misconduct to include a felony charge of a serious crime and had made the burden of proof more stringent. The whole reason for consideration of these matters, he pointed out, was that public trust had been lost; and it is necessary to regain it.

It was moved by Regent Rosenzweig and seconded by Regent Smith that the Committee adopt Draft 11b, with the following changes:

- Addition of “in state or federal court” after the words “Being charged with, pleading guilty or no contest to, or being convicted of a felony” in s.7.02(1)
- Addition of fraud and embezzlement to the list felonies that constitute serious criminal misconduct
- Clarification of language in the nexus section that the criminal misconduct seriously impairs the ability of colleagues to fulfill their teaching, research, and public service missions and the ability of students to learn, do research and engage in public service.

Regent Spector noted that the motion includes a mirror-image rule for academic staff with indefinite appointments.

Professor Evenson suggested that, given the controversial nature of the impairment of public trust section, the standard of clear and convincing evidence should be applied in making that determination.

It was noted by Ms. Brady that s.7.02 involves a definition and that burden of proof applies to actions, rather than to definitions. Regent Spector added that the clear and convincing standard applies to all actions except those in s.7.06.

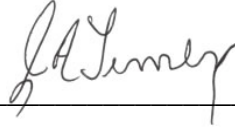
Pam Matthews, assistant to Representative Suzanne Jeskewitz, pointed out that a district attorney would not likely move forward with a felony charge without adequate evidence.

Professor Shauer commented that the clear and convincing evidence standard would make the expedited process even more difficult to implement.

Regent Spector noted that the rules include provision for enlargement of time, if necessary.

The question was put on the motion, which was adopted on a unanimous roll-call vote, with Regent Spector, General Counsel Brady, Professor Dickey, Regent Rosenzweig, Regent Smith, and Regent President Walsh voting in the affirmative.

The meeting was adjourned at 3:00 p.m.

A handwritten signature in cursive script, appearing to read "J. A. Temby".

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Judith A. Temby, Secretary