

Regular Meeting of the University Senate

March 31, 2005

IRJ, Board Room

Attendance

Arts & Sciences: Dobkin, Chair; Branch; Jubran; Lewis; Meter; Nadkarni; Otto; Pachence;

Pierson; Sullivan; Walsh; Williams

Business: Barkacs; Gin; Schubert

Education: None

Law: Kelly; Lazerow

Nursing: Hunter

Ex-Officio: Donnellan; Drinan

Representative: Franz

Dobkin called the meeting to order at 12:25 p.m.

1. Announcements

a) Draft response to President Lyons regarding UC expansion/two-year residency requirement (attached to agenda).

b) Benefits Policy Committee report (attached to agenda).

c) Call for volunteers, Ad Hoc Committee on Academic Review (attached to agenda).

d) Draft statement to President Lyons regarding Intersession (attached to agenda). Senators discussed the follow issues to be considered, and Dobkin said she would add these to the memo:

- Explore implications for other three-week sessions, such as pre- and post-Summer Session.
- Consider the impact on faculty workload during January, how that time is used, and opportunities that might be lost.
- Consider the value of immersion learning that could be lost.
- Examine special programs and study-abroad programs that could be affected by the loss of Intersession.
- Ensure that the decision is guided by academic interests, not preferences regarding efficiency in areas such as housing.
- Consider the effect on graduate students, who, for example, may rely on the Intersession period to work to help finance tuition.
- Consider the impact on Community Service Learning by the loss of Intersession.

e) Second annual Senate retreat. Dobkin will schedule a Senate retreat date for the end of May or early June.

2. Approval of minutes of Feb. 24, 2005

Motion by Kelly, seconded by Walsh, to: APPROVE THE MINUTES OF FEB. 24, 2005.

Vote: Passed by voice vote.

3) Old business

Motion to accept amendments to the University's policy on Appeals from ARRT Decisions:

1. Add/strike language to the first paragraph in Section D as indicated.
2. Add language to Section D.2 as indicated.
3. Add a final paragraph of Section D as indicated.
- 3a. Amend Section E1, introductory paragraph and subsec. D, as indicated.
4. Renumber Section E.2.e, and add to Section E.2 as indicated.

5. Divide current Sections E.4 into new Sections E.3 and E.4, and add language to a new Section E.3 (phrases have been added based on discussion at the last Senate meeting):

As part of this initial discussion at its first meeting, the ARRT Appeals Committee will determine (1) whether the requirements stated in Sections E.1 and E.2 of these rules have been fulfilled, and (2) whether the grievant has alleged facts that, if true, would be sufficient to establish one or both grounds for appeal as stated in Section D of these rules that, if proven, would permit the Committee to determine the appeal in favor of the grievant.

If the ARRT Appeals Committee determines that the requirements of Sections E.1 or E.2 of these rules have not been fulfilled, then it will return the appeal to the Provost with an explanation of the deficiency. If the ARRT Appeals Committee determines that the grievant has not alleged facts, that if true, would be sufficient ground for appeal under Section D of these rules, then it will dismiss the appeal and provide a written explanation of the reason for dismissal to the Provost and grievant.

6. Divide current Section E.4 into new Sections E.3 and E.4, and add language to a new Section E.4 as indicated.
7. Amend Section E.4.c through E.4.g as indicated.
8. Amend the first paragraph of Section E.6 as indicated.

Dobkin said the Executive Committee made the following changes: insert in no. 5 the phrases “that, if true, would be sufficient to establish” based on Senate discussions about whether the committee could decide at the first meeting that there was a reason not to continue or whether it was obligated to continue under almost every circumstance to a second meeting.

Drinan asked whether the language change in no. 5 achieves the objective to allow the committee to dismiss the appeal. Kelly responded that the change makes it clear that facts must be alleged that, if true, would support the conclusion. If the facts as alleged don’t make any difference, then it won’t go forward. If you have to decide whether the fact is true or false, the evidence must be heard at a second meeting.

Donnellan recommended that consideration be given to not having an appeal for non-reappointment, and that a clear process be set up that everybody can buy into as faculty with the understanding that decisions are made with careful deliberation.

Discussion followed regarding the flawed nature of the appeals policy, the committee’s proposed amendments, which are imperfect, and the need to further explore the appeal policy issues. The policy needs to be reviewed by the University’s General Counsel and reviewed again by the Senate.

Lazerow recommended exploring what and where the problems are. Are appeals for reappointment, rank, or tenure decisions? The policy has implications for appeals of the decision and also for the hiring process. If the problem is nobody knows what is going on and the worst is suspected, we may need a mediation process followed by the decision-maker taking a new look after all the facts have been disclosed to the aggrieved party.

Donnellan recommended that, in addressing problems with the proposed policy, it be noted that at issue too is the amount of time that is put into an appeal, often to the detriment of the both ARRT and appeals committee members.

Motion by Williams, seconded by Branch, to: DEFER FURTHER CONSIDERATION OF THE MOTION UNTIL THE SENATE RETREAT AND, BETWEEN NOW AND THEN,

ASSEMBLE THE INFORMATION THAT IS NEEDED EITHER BY SOLICITING IT FROM DR. DONNELLAN OR WHATEVER WAY SEEMS APPROPRIATE.

Speaking in opposition to the motion, Kelly said that the Senate may not get better information than it has at present. The committee could provide more evidence of the problems on which the amendments were based. The Senate must articulate to the university's attorney what we want in an appeal process before the attorney can advise.

Sullivan pointed out that only one of the four substantial changes to the policy suggested by the Faculty Status Committee has raised questions and is being challenged. The proposed policy is at least better than the present one, and, therefore, the Senate might vote to approve the motion knowing that the meeting minutes will reflect the Senate's desire to continue its efforts to clarify the appeals committee charge and authority.

Vote to defer: 7 – Approve; 10 – Oppose; 1 – Abstain. The motion failed.

Schubert referred to E.6.b.7., which states “The contested ARRT decision was made in violation of the Rank and Tenure Policy and entitles the faculty grievant to a new or different ARRT decision, to be made by the same person or body whose recommendation formed the basis for the decision, or by a different person or body.” It doesn't specify who that different person or body could be, which he finds disturbing. This was unaddressed by the revisions and there are potentially other areas that need to be addressed.

Walsh said more work is needed on the appeals policy. It is important to have a fair appeals process that is possible for the grievant to succeed. The assumption that mistakes and unfairness do not happen is unrealistic. The appeal process should include reappointment.

Kelly said the Senate will need to consider what the appeal process should do. If the appeal process is to determine whether a mistake was made and it should be changed, this is the process to have. If the process is aimed to prevent litigation by persuading the person that they have been dealt with fairly and correctly and not let them be heard before you say “No, they have to sue,” then we would want a policy that eliminates the chance for the person to appear before the committee and for the committee to stay with its decision. Or, third, do we want an appeal process that puts USD in the best position when litigation occurs? You either want no appeal process at all or a process close to the one the committee has proposed; we may look better at litigation if a decision was given a second look and still came out the same.

Williams called the question.

Dobkin tabled the question to the next Senate meeting.

Submitted by,

David Sullivan
Secretary

Peggy Agerton
Recording Secretary