

Regular Meeting of the University Senate

April 28, 2005

IPJ, Room A

Attendance

Arts & Sciences: Dobkin, Chair; Branch; Lewis; Meter; Nadkarni; Nelson; Otto; Pachence; Pierson; Sullivan; Walsh; Williams

Business: Barkacs; Gin; Schubert

Education: Monroe; Quezada

Law: Kelly; Lazerow; Player; Ramsey

Nursing: Hunter

Ex-Officio: Cordeiro; Donnellan; Drinan

Representative: Franz

Guest: Herrinton

1. Announcements

a) Report from President's Cabinet.

b) Senate retreat. The retreat is scheduled for May 26 in IPJ, room G. Suggestions for agenda items are welcome.

c) Confirmation of Dr. Frank Jacobitz as IRB representative from the School of Business.

Motion by Kelly, seconded by Hunter to: ACCEPT DR. FRANK JACOBITZ AS IRB REPRESENTATIVE FROM THE SCHOOL OF BUSINESS ADMINISTRATION.

Vote: Passed unanimously.

d) Report of the Board of Trustees Student Affairs Committee. Report will be distributed at the May 15 meeting.

e) UC expansion. Dobkin reported that the two-year residency component will not be part of the UC expansion resolution to the Board of Trustees on Friday, April 29. The residence halls are needed and are not tied to a mandatory two-year residency program; that decision will be made later.

f) Search for Vice President of Student Affairs. The search committee will bring final candidates to campus in week or two. Dobkin has requested scheduled Senate time with the candidates.

g) Other. President Lyons will attend the Senate retreat. Lyons is contacting Thomas Emmet, the consultant hired to review and update the *Policy and Procedures Manual*, to attend the May 15 Senate meeting to reinforce the need for Senate inclusion at every level, particularly the foundation level.

2. Approval of the minutes of April 14, 2005

Motion by Kelly, seconded by Walsh, to: APPROVE THE MINUTES OF APRIL 14, 2005 WITH THE FOLLOWING CHANGE: Attendance, delete Drinan.

Vote: Passed unanimously.

3. Report from the Executive Committee: Draft resolution to the President regarding Senate inclusion in decision-making processes

Resolution

The Senate expresses its deep concern for the lack of Senate consultation in the decision-making processes of the University of San Diego. The Senate Constitution, approved by the President and Board of Trustees, gives the Senate the authority "to ascertain, consider, evaluate and act upon jurisdictional issues, questions, cases, matters, proposals, plans, and actions" and "to formulate, support, and advance policies of sound education, fair and just administration, and prudent fiscal management" (1.1.6, Article II, secs. 3,6). The Senate has "primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process" (1.1.6, Article VIII, sec. 1).

Recently, decisions have been made (e.g., capital planning, student life) by processes that precluded the Senate's exercise of its duties and responsibilities. The legitimacy of decision-making processes is compromised and the quality of decisions may suffer when the resources of the Senate are not utilized. Senate consultation must be solicited in a manner that allows timely, inclusive, and considered participation.

Senators discussed the resolution and its distribution.

Kelly called the question.

Vote: 19 – Approve; 0 – Oppose; 4 – Abstain. The resolution passed.

Donnellan said she will ask Lyons to put it on the Executive Council agenda.

Motion by Barkacs, seconded by Lewis, to: RECONSIDER THE RESOLUTION.

Vote: 12 – Approve; 7 – Oppose; 1 – Abstain. The motion passed.

Motion to amend by Barkacs, seconded by Cordeiro, to: ADD “CONSISTENT WITH THE SENATE CONSTITUTION,” BEFORE THE BEGINNING OF THE LAST SENTENCE to read: “Consistent with the Senate Constitution, Senate consultation must be solicited in a manner that allows timely, inclusive, and considered participation.”

Vote: 17 – Approve; 1 – Oppose; 4 – Abstain. The motion passed.

Vote on amended resolution: 19 – Approve; 0 – Oppose; 3 – Abstain. The amended resolution passed.

4. Old business

Substitute Motion from Pat Drinan regarding amendments to the University policy on Appeals from ARRT Decisions: “Be it resolved that the existing ARRT Policies and Procedure be continued as is (with editorial revisions) and be replaced by the following text beginning from “E.1.”

1. Commencement of Appeal: The faculty grievant commences an appeal when the faculty member communicates in writing to the Provost the grounds for the appeal (section ‘D’) and the related rationale or rationales for reversing the ARRT recommendation.
2. The Provost forms the Appeals Committee, convenes its first meeting, and provides the Committee with a copy of the grievant’s appeal and the documents of the ARRT Committee on the case. The Provost also transmits a copy of the grievant’s appeal to the dean, the chair of the ARRT Committee that made the recommendation, and to the grievant’s immediate supervisor, if not the dean.

3. The Appeals Committee selects its Chair, reviews materials supplied to it by the Provost, and decides by majority vote whether to:
 - a. recommend to the Provost that the grievant's appeal appears to lack sufficient merit to proceed with further Appeals Committee deliberations; or
 - b. gather more information in writing in a timely manner from one or more of the following: dean, chair of the ARRT Committee, grievant, or other parties who may have perspective of utility to the Appeals Committee.
4. If '3.b' is engaged, the Appeals Committee will re-convene to deliberate and decide to recommend one of the following:
 - a. The appeal lacks sufficient merit to require reconsideration;
 - b. The appeal may have sufficient merit and should be directed to the original ARRT Committee for reconsideration;
 - c. The appeal is convincing in that the negative decision may have been improperly made, and the President and Provost should create an ad hoc faculty panel to review the merits of the case which will include faculty who are from the academic unit or units represented in the ARRT Committee but not necessarily from the ARRT Committee which made the original recommendation.
5. The ARRT Appeals Committee will forward its recommendation to the President and Provost with copies to the grievant, ARRT Committee members who made the original recommendation, and to the dean of the academic unit. The recommendation may include separate statements from ARRT Appeals Committee members.
6. The President will make a decision within 45 days of receipt of the Appeals Committee recommendation; and
7. If a negative decision ensues from engaging options '4.b'. or '4.c.' above, this Appeals policy and procedure will not be available for further appeals."

Motion to be substituted: Accept amendments to the University's policy on Appeals from ARRT Decisions made as recommendations in the Faculty Status Committee Report, attached. The language to which each amendment refers is provided in the attached Faculty Status Report.

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, that if proven would permit a favorable decision, then it will

dismiss the appeal and provide a written explanation of the reason for dismissal to the Provost and grievant.

6. Divide current Sections 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 Section E.5 as indicated.
9. Amend the first paragraph of Section E.6 as indicated.

Drinan said the substitute motion provides a clear, more understandable process; an appeals committee will know what it can do and will have clear options during the process. The amendment doesn't include the last section of the appeals policy, which encourages mediated settlements during the process; the motion may be amended to include it.

Barkacs said an area of difficulty is the seeking and gathering of information, which isn't always clear. For example, should a hearing be conducted, who should be at the hearing, and can the grievant face and cross examine the accused?

Drinan said if the committee notes a number of issues and it seems wrong from several directions, the committee may send it back for reconsideration; if it seems really wrong, the committee can ask the provost and president to set up a new faculty body to handle the case.

Kelly noted that two appeals committee options are retained in the substitute motion: the committee may reject the claim (existing policy E.1 – E.4; substitute motion 4a), or the committee may reconsider the claim and send it back (existing policy E.5 – E.6; substitute motion 4b). Kelly then clarified differences between section E.7 of the existing policy and 4.c of the substitute motion. The existing policy provides for more appeal case outcomes than does the substitute motion. Under the existing policy, the committee may determine that the original decision was wrong, make a decision, and then recommend that the president send it to somebody who isn't a faculty body, such as the Provost, to do what the appeals committee has determined should be done. The substitute motion doesn't include an E.7 option; it creates section 4c that says such a decision ought to be reconsidered, but not by the original body. The substitute motion eliminates the possibility of having only two hearings – the original hearing and the appeal hearing – and the appeals committee can only recommend reconsideration of a decision, not determine a resolution to the case. The existing policy does not allow reconsideration by any body but the ARRT committee.

Schubert interpreted E.7 more broadly to mean it can be sent back to a new committee or send it to a variety of people or groups. The substitute motion narrows it down whereby it can only be sent to one place -- a faculty committee. Donnellan noted that in some schools there aren't enough departments or only one department with small bodies to draw from. The appeals process needs to have the option of bringing someone in to look at the appeal.

Kelly, responding to Schubert, said that sections E.5 and E.6 say that if there has been a problem, the appellant may be entitled to reconsideration of that decision to the original body. Section E.7 says the appellant is not entitled to reconsideration, but is entitled to a new or different decision. That difference could be clarified by an amendment.

In response to Nelson's inquiry about where guidelines for the new committee are located, Drinan said that guidelines are in the ARRT Appeals Policy and other supporting documents from the school. The ARRT policy doesn't prohibit an existing ARRT committee from inviting people to the committee, although by custom this isn't done in the College. The customs of the academic unit would be honored, which is what he tried to establish in 4.c.

Kelly said Nelson's inquiry hits the issue square on. The key issue is that the substitute motion shortens subsection E to a page or so, which eliminates some guidelines and clarity. The guidelines are in the original policy and remain after the amendments that the committee proposes. The committee report is good. Some ideas in the substitute motion might improve it, such as paragraph 7, which states that there is only one appeal. It might be better to amend the committee version, which is clearer, more detailed, and richer rather than substitute a document that is shorter and more concise, but provides less guidance.

Motion made and seconded to adjourn. The meeting adjourned at 1:47 p.m.

Submitted by,

David Sullivan
Secretary

Peggy Agerton
Recording Secretary