

EAST CAROLINA UNIVERSITY
2021-2022 Faculty Governance Committee

MINUTES OF MEETING DATE: Wednesday, February 9, 2022, 3-5 p.m.

ATTENDANCE

PRESIDING: David Wilson-Okamura

REGULAR MEMBERS (_X_ IN ATTENDANCE):

Stacey Altman _X_, Cynthia Deale _X_, Edwin Gomez __,

Jay Newhard _X_, Anne Ticknor _X_, Mark Bowler__X_, Susie Harris _X__

EX-OFFICIO MEMBERS (_X_ IN ATTENDANCE) (with vote):

Crystal Chambers__X_, Wendy Sergeant__X_, Mary Farwell_X__, Purificación Martínez__X_,

Dave Thomson__ , Lisa Hudson,__X_

Guests in attendance: Linda Ingalls, Rachel Baker, Paul Zigas

Call to Order, 3:00 pm

1. Approved minutes of the January 26 , 2022, meeting
2. Discussion about how to formalize the procedure when tenure requirements change in the middle of someone's probationary period: with General Counsel and VC of Legal Affairs--Paul Zigas
 - Paul Zigas (Zigas) noted that he does not see any legal issues with having differences at the two campuses. There could be arguments that they should be the same, but the world differs between the main campus and the health sciences campus.
 - Puri Martinez (Martinez) noted that the tenure and promotion guidelines and processes that were approved when a faculty member was hired could be changed.
 - Zigas asked for examples.
 - Martinez asked whether the rules could be equal across the entire university.
 - Zigas noted that it is would not be illegal. However, specific issues for specific faculty can be handled on a case-by-case scenario. This committee can articulate their views to the chancellor, but at the end of the day it is a business decision not a legal one.
 - Ingalls noted that there are tenure lawsuits that she is familiar with where an individual did not get tenure because they did not meet criteria and those criteria might have changed during their probationary period. She noted that tenure is not a property right until it is conferred so up until that point it can be changed with a change in a reappointment action. There are permissible reasons for denying reappointment and those are the only reasons. Review of the decision is what it is called; UNC code changed it to be a review. The board of governors and UNC system have to be able to make changes. For example, for appropriate Carnegie

classifications for research classifications and external funding; we do have mechanisms for changing it on an individual basis. For example, we had construction management change its tenure and promotion criteria and it included an enabling clause that stated that everyone that was in their 2nd year of appointment to probationary term could be granted an extension. If the institution decided to change criteria there can be an enabling clause if units change their criteria; we cannot lock in promotion criteria.

- Wilson Okamura noted that this sounds like the law does not prohibit us from making a general policy.
- Zigas stated that health sciences can say that they are not going to engage in changing it and will honor people's criteria that they came in on; the university has adequate methods for responding to any issues.
- Bowler asked if Zigas could give the committee legal advice --Are we not acting on behalf of the institution?
- Zigas noted that my client is the institution, and you are not my client.
- Martinez said that we recommend to Academic Council to make processes as fair and similar as possible across the board.
- Wilson-Okamura asked asked--should we make a recommendation on this issue to Academic Council or the faculty senate?
- Bowler asked if it is possible to do both.
- Lisa Hudson (Hudson) asked if this would be an example where we suggest that there is an interpretation.
- Martinez said yes. We need to ensure that we make a recommendation and that it is widely known; an interpretation is done until a revision to the faculty manual is completed.
- Ingalls said that it would need the board of trustees approval and system office approval, but not the board of governors; the system reviews it to make sure it is consistent with the UNC code.
- Crystal Chambers (Chambers) thinks that this is the time to make a recommendation.
- Ingalls said that in her opinion that she thinks that this goes beyond an interpretation. She thinks it is a policy decision/change. She think it requires the board of trustees approval.
- Wilson-Okamura noted that this is not an emergency so it may take some time to do what we think needs to be done. We can deliberate on policies and then enact them when possible.
- Martinez noted that that health sciences can continue carrying on as they have done, so that the case that prompted this discussion in the first place can be resolved.
- Wilson-Okamura asked for two volunteers to draft something and to think about where in the faculty manual to we can insert it and then asked-- what kind of policy do we want to insert?
- Chambers expressed her concern that people do not want to take on something new and wondered if there is a stop gap measure that we can do.
- Martinez said that she is working on Part IX, making revisions, and we have an appointment on 2-21 to go over the second part of the revisions. In March and

April, we can discuss the changes. Several things are needed; clarification about what to do with the absentee ballot and the issue about clarifying language about post tenure review and now this issue, and with regard to fixed-term faculty.

- Wilson-Okamura noted that we could send a few sentences to Academic Council.
- Martinez said that we can send a note to Academic Council and at same time be looking into where it can go in the faculty manual if they give us the go ahead.
- Wilson-Okamura suggested that we keep a note on this and come back to it in the fall; we want to give good consideration to this issue and Martinez can let health sciences know that they can go ahead and deal with the issue that they have.
- Susie Harris (Harris) noted that she thought that was a good idea.

3. Fixed-term contract language

- Wilson-Okamura shared the revised fixed term code amendments to code 610 and code 603. The wording begins with the following: “The continued employment of a special faculty member during the term of appointment may be made expressly contingent on terms such as continued availability of funding from any source on enrollment levels or any other contingency established by the institution...”

He noted that the result was a set of sample paragraphs—from Brody, the dental college, the college of nursing, and Academic affairs. He noted that the contingency wording from Academic Affairs widens the capacity for the administration to terminate contracts in the middle of contract terms. He thinks changes are needed, include revising the wording about funding and reducing a faculty member’s FTE. He noted that he asked some of his colleagues what they would do if there was a reduction in their FTE and they said they would quit and look for a different job, because reducing FTE affects full-time status, health benefits, and retirement contributions. Though well-intentioned, this practice would have negative unintended consequences. In general, the new contracts seem less contractual and easier for the university to break in the middle of the contract.

- Chambers said that she is reaching out to legal counsel at other UNC institutions about this matter.
- Jay Newhard (Newhard) noted that he was looking at 610 about special faculty and noted that there are two kinds, a truly special one like a guest or visiting faculty member and then there are the fixed term faculty with heavy teaching loads; there may be some confusion as these two very different groups are both seen as special.
- Ingalls noted that ECU uses the phrase “fixed term,” but not every UNC institution does; the use of the special faculty term is very broad and 610 is an umbrella section.
- Martinez said that she has talked with many about the language and as far as she understands there is not a dean and any faculty member who likes this language, and she says that ECU has no intention of cancelling a contract in the middle of a contract. The language was related to particular circumstances and Brody and ECU Physicians because Vidant decided to discontinue certain specialties and the faculty who were working with ECU Physicians were then hired to work for ECU

and ECU paid for them; they were very exceptional circumstances. She has spoken to both deans in Brody and the situation that occurred will no longer take place. The circumstances that originated this language no longer exist and nobody likes the language. She thinks that we need to recommend the elimination of this language from fixed term contracts.

- Hudson agreed 100% with Martinez. She noted that there is no faculty member, department chair, or dean that likes the language. She gave an example of how this language may have raised the interest rate on someone buying a house because the language was perceived as risky. She thinks that the UNC system office said that they needed to put language in and at the beginning of the pandemic there was concern about a huge budget shortfall that thankfully did not happen. She would like to have more inviting language regarding our fixed term faculty.
- Newhard noted that there should be different terms for different categories and the reasonable expectation of ongoing employment if it is not for example, the Whichard Chair as that is what he thought of with special faculty. He noted that may be the differences between the main campus and health sciences campus and Whichard chair type faculty, three different categories need to be clarified?
- Martinez said it makes sense, but she does not think we want wording in any contract that can be cancelled at any moment . We do not want a “contrato de basura “ (“garbage contract’ in Spanish), a contract that is at the whim of the employer. She said that is unconscionable. The wording should be eliminated.
- Chambers said that it was her understanding that there has to be some language there, but ECU’s language is more draconian than it needs to be. She has asked other legal counsels in the UNC system institutions about language. The current language *almost* makes a contractual employee an at will employee.
- Wilson-Okamura asked if the committee was in agreement that it is undesirable to chop up a contract and take away classes.
- Ingalls noted that when you say in the middle of a contract, she thinks we are thinking of a short notice type thing. She thinks we are trying to go to 5-year contracts maybe even in general, so when we are talking about in the middle of a 5-year window in terms of budget issues it is very different than in the middle of a semester or 2-year contract, etc. and when you are talking about a 5-year period that is an issue.
- Wilson-Okamura noted that in the English department that 10 fixed-term faculty members are on 3-year contracts.
- Martinez said that about half of her department are on fixed term contracts; there are 12 and currently none are on 3-year contracts.
- Ingalls said that ECU is headed toward more multi-year contracts.
- Martinez noted that the current language eliminates any sense of security and any strength or value of the contract. It gives the expectation that unless performance is not good or the university goes bankrupt that their contract will be honored, but the part after “Notwithstanding ...”eliminates any sense of a real contract. This is something she cares deeply about.
- Newhard said that something like this is going to need to be in the contract. However, the wording is provoking more fear than needed and maybe we can

suggest different wording. For example, the part that states that “Funds unavailable for any reason” is very protective of the university but offers no assurance to the employee.

- Wilson-Okamura noted that it lowers the bar for terminating a contract, and it does not provide a process.
- Bowler said to look at the statement after “Notwithstanding...” and suggested that maybe it would be wise to add more to the wording. He agrees that there is not actual contract with that wording. He suggested that we buff up the appointment and get rid of the part beginning with “Notwithstanding..” and suggested that we should strike that reduce the FTE part because that gets rid of people’s benefits and that statement is horrible.
- Anne Ticknor (Ticknor) agreed with Bowler and Martinez.
- Martinez stated that she is ready to move that the committee remove the wording that starts with “Notwithstanding.” And wanted an explanation of the last sentence that includes “until cancellations.”
- Chambers said that this is a waiver of a process; she thinks that there needs to be a due process that it is tied to.
- Martinez made a motion to remove everything from the “Notwithsatnading..”
- The motion was seconded.
- Newhard said that he is on the AAUP, and he does not think that the OUC is going to accept eliminating this. He agrees with Bowler and thinks we are trying to arrive at the same point; it should only state what is obvious and no more. He believes that we can come up with language by looking at the other documents. The current language could be whimsical, at will. It could come across like a “garbage contract.” He suggests making changes to the wording.
- Chambers noted that she might get feedback from other UNC legal counsel about possible alternative wording.
- Wilson-Okamura stated that we do not want to fail on this one.
- Martinez said that she has talked to the chancellor about this since July, but we do not want to wait too long as contracts for fixed term faculty members are starting to be written before too long.
- Hudson said that is a good point as they have about 300 fixed contracts per year at the health sciences campus.
- Chambers asked if she could have by the end of the day on Friday to get feedback from other UNC institutions and if not we can proceed with this outcome.
- Ticknor noted that she was getting a little lost in the discussion and felt that we are talking around and around and most of us are in agreement that we should get rid of that part of the contract. She asked-are we looking to replace what is struck out?
- Martinez noted that a motion has been seconded and we need to decide if the motion passes or fails and then we can take the next step.
- Wilson-Okamura said that one way to think about this is that the strikeout is an initial decision and not the final text. He asked if there was any further discussion of Martinez’s motion? He called for a vote on the motion.
- The motion carried.

- Martinez noted that we can get further wording that we can add from other universities and have Chambers and the subcommittee work on alternate wording.
 - Martinez noted that if we do not understand health science language then Hudson and Harris can give advice and collegial advice.
 - The committee voted to deputize Chambers, Martinez, and Wilson-Okamura to negotiate with the Academic Council on its behalf.
 - Hudson said that she would be happy to help.
4. Topic—Proposed code of conduct changes
- Auditor Wayne Poole suggested two ways of proceeding:
 1. Provide the document to all employees and get feedback
 2. Or FGC could give its formal advice without getting feedback first.
 - Chambers thinks campus feedback is important.
 - The committee was all in favor of obtaining faculty feedback and then we can provide input as a committee.
5. Dean of Arts and Sciences noted Ambiguities in the wording of the 5-year tenure review process
- Wilson-Okamura: according to the dean, we need clarification about the dates to be covered in 5-year plan and the meaning of the word *cycle*. Is it the previous 5-year plan or the future 5-year plan? Is post tenure review about what you did or what you are going to do?
 - Martinez looked at UNC policy and her recommendation is that we do as little as possible with this policy. We need to compare it with the UNC policy before we deliberate or discuss this matter.
 - Wilson-Okamura asked if Rachel Baker could help us find that UNC policy and she is looking at it.
6. Other business
- Library:
- Wilson-Okamura noted that the meeting was cancelled with the directors of the libraries. Martinez explained that they are dealing with more immediate issues, having to do with the merging of the libraries.
- Workload:
- Martinez said that they are working to updating the workload policy a to align with UNC and asked if the subcommittee could give timeline for the committee.
 - Bowler said we need the new funding model first as it might change workload policies . Currently we weight master's and doctoral course heavier, but under the new model that does not seem to be the case. The new model is not the same in terms of generating the FTE. He thinks it is premature to rework workload policy until new model is articulated.

Items for the next meeting:

- Wilson-Okamura noted that we will return to records retention, and we will talk about 5-year plan briefly and we will talk about the code of conduct.
- Martinez noted that she and Chambers will meet prior to the next meeting.
- Returning to the question of whether the university's general counsel can give legal advice to the faculty, Bowler checked web pages at other UNC schools and noted that every other UNC general counsel serves the board the chancellor, board, faculty, and staff in legal matters. We are apparently the only one that constrains legal counsel to chancellor ...etc....
- Martinez noted that this issue has been raised.

The meeting adjourned at 5:00 pm

The meeting minutes are respectfully submitted by Cynthia S. Deale