

EAST CAROLINA UNIVERSITY  
2021-2022 Faculty Governance Committee

MINUTES OF MEETING DATE: Wednesday, February 23, 2022, 3-5 p.m.

ATTENDANCE

PRESIDING: David Wilson-Okamura

REGULAR MEMBERS (\_X\_ IN ATTENDANCE):

Stacey Altman \_X\_, Cynthia Deale \_X\_, Edwin Gomez \_\_X\_,

Jay Newhard \_X\_, Anne Ticknor \_X\_, Mark Bowler\_\_\_, Susie Harris \_X\_\_

EX-OFFICIO MEMBERS (\_X\_ IN ATTENDANCE) (with vote):

Crystal Chambers\_\_X\_, Wendy Sergeant\_\_X\_, Mary Farwell\_X\_\_, Purificación Martínez\_(at 4)\_, Dave Thomson\_\_X\_ , Lisa Hudson,\_\_X\_

Guests in attendance: Linda Ingalls, Rachel Baker

Call to Order, 3:00 pm

1. Approved the minutes of Feb. 9, 2022

- David Wilson-Okamura (Wilson-Okamura) shared that Mark Bowler (Bowler) had input about the evaluations subcommittee
- Anne Ticknor (Ticknor) said that they met with Alison Dannell and others and that they wanted us to consider feedback, but they did not have time to process it, but noted that when they meet again, they will talk through it. Tentatively they might have something to share in April, but she did not think they will have a final product.

2. Report on fixed-term contract language negotiation with Academic Council (Chambers, Martinez, Wilson-Okamura).

- Lisa Hudson (Hudson) said that fixed term faculty on the health sciences campus bring in 79 million\$ in revenue over and above their salaries on the clinical side; they make a huge contribution.
- Wilson-Okamura noted that across the university people are still thinking of fixed term faculty members as temporary employees on the way to something else and that may have been true in past, it is not true now; 50% of our faculty are fixed term. They are career professionals—this is their real job. He said that Puri Martinez (Martinez) and he will meet with Academic Council next week. He noted that none of this would be happening without the work of Martinez.

3. Report or recommendations from records retention subcommittee (Altman, Hudson, Sergeant).

- Stacey Altman (Altman) reported that the subcommittee cleaned up Part VIII of the faculty manual. She went through Part VIII with the committee.
- Rachel Baker (Baker) said that the subcommittee will present it clean in the agenda attachment, but will link to a copy with tracked changes in case someone is very concerned and for her benefit as well because it can be difficult to track the history of change without that there.
- Altman noted that they cleaned it up and need the committee's feedback. She shared that they used the word file in the document because while there may be physical files in multiple places, they are talking about the personnel file. They tried to be consistent and had a discussion to leave s on or off. And the group was okay with keeping that wording. She noted that later in the document they talk about records or files where information might be located. She thought that creating some new information could be helpful such as a repository of some kinds that would provide information.
- Wilson-Okamura questioned who could make the repository—the Office of Faculty Excellence (OFE), Academic Affairs (AA) or faculty senate?
- Altman felt that any of those could do that and almost thinks that faculty welfare or the ombudsman could do it, but that presupposes a conflict and that might not be the disposition we want for this issue.
- Wilson-Okamura nominated the OFE as it is his impression that they are looking for ways to help and this would not take faculty members away from teaching and scholarship to do this task.
- Altman noted that she will take out the part about the faculty senate “educating” on this topic. She then had the FGC read the part on the privacy of the personnel file and stated that they were trying to point back to general statues as much as possible.
- David Thomson (Thomson) commented about taking out wording about supervisors
- Ticknor asked that we go back to original wording.
- Linda Ingalls (Ingalls) asked moving the term “supervisory chain.”
- Crystal Chambers (Chambers) noted that the notion of authorization should cover the supervisory chain. She suggested revising it to state “but for purposes of official university business only” language.
- Altman noted that the faculty member's access is the content in B. She noted that any mention of secret files is unnecessary as there are none, and the attorney asked what is a secret file?
- Wilson-Okamura said that secret files were indeed created in some cases. He posited that if you were a chair would you think-- I am not allowed to create personnel files without the knowledge of the faculty member?
- Chambers agreed and thought it could be part of the educational materials. She said that it could be no files other than ...federal, state, ECU regulatory...etc.
- Wilson-Okamura polled the committee to see if they thought we needed prohibitory language—the vote was a tie.
- Altman noted that she thinks that the university is noticing that university chairs need more training; to her this is a charge to comply or get training. This presumes that you won't have a secret file. We need to have an explanation of what can be in a file, a list of what could be there as some information might not need to be there.

- Wilson-Okamura thinks that the list would be wanted so as to provide examples of where personnel files can be located.
- Thomson noted that he thinks we need to be sure to reinforce that these are examples of where personnel files would be.
- Altman asked if we could say “include, but are not limited to...”
- Thomson liked that wording.
- Wilson-Okamura noted that we are welcome back to the secret file issue
- Baker quoted the language being replaced. “The language reads as follows: No material obtained from an anonymous source shall be placed in the personnel file except data from student opinion surveys. Data from student opinion surveys shall be submitted by the authorized surveying agent to the faculty member and the unit administrator. Administrators shall not keep secret files. “
- Wilson-Okamura noted that he is worried about taking out that language.
- Ticknor agreed as there was an issue with secret files
- Altman—noted that the problem is that chairs do not read the faculty manual.
- Wilson-Okamura observed that there is nothing in another document about this issue.
- Ed Gomez (Gomez) talked about the process he used with his faculty.
- Altman noted that the process Gomez talking about is the student complaint process.
- Wilson-Okamura asked why we don’t need a prohibition on anonymous sources.
- Altman said that is because that is not consistent with the system policy. She noted that she feels like we are going around in circles and noted that if it makes everyone feel better to put it back in, what’s the worst that can happen? That it comes back from OUC and chancellor. She noted that in the access part that we talk more about process and definition of content and maybe it should go in part B in the definition and content part—below B.
- Jay Newhard (Newhard) suggested that we reorganize content and OUC would not object to saying what should not exist.
- Altman noted that we met with two of OUC.
- Ingalls stated that they thought that the general statute creates enough confusion. She suggests that it be worded more like...” university officers responsible for personnel files shall not maintain files that do not comply with ...” as nobody at the university should be keeping a secret file about another person’s employment.
- Wilson-Okamura noted that how about including something about when new materials are introduced into a personnel file, they must notify the faculty member.
- Ingalls observed that we talked about tis before and there’s the problem. There is a timing issue—at what point? 1 day before, 3 days before, etc. or does that need to be checked out ... so it could get very complicated.
- Thomson asked if it is the idea that administrators that should only maintain records in compliance with the federal, state, UNC system, etc. and is that affirmative? If so, then any other records would be irrelevant in a personnel action.
- Altman said yes.
- Wilson-Okamura applauded our move to say obey the law and said that he does think in this case that the person is disobeying the law for the good of the department or student(s), but asked how many department chairs are going to read statues in their statutory form?

- Altman noted that it is kind of a pick and choose; they are obligated.
- Wilson-Okamura made a motion to insert the language that was already there (see above language). The vote was 5 in favor of inserting the wording and 3 against. The motion carried.
- Thomson mused that he does not see that if your colleague keeps a file on you that there is a lot that you can do and that is where that anonymous report piece kicks in.
- Wilson-Okamura said that right now it sounds like some kind of wording like this is favored.
- Altman then talked about the objections to the content included. She noted that it is similar to the previous section 126.25. They condensed the wording (in blue on the document shared with the FGC). She said that currently what is in the faculty manual could be misleading so this clarifies it (keeping the green writing not the other part in blue on the document shared with the FGC).
- Wilson-Okamura asked about some of the wording.
- Ticknor asked about replacing some wording. Changes were suggested.
- Wilson-Okamura then asked —what do we want to do about secret files? He talked about issues concerning this part.
- Altman asked if wording about the penalty would be helpful.
- Ingalls said that they quoted the statute above so why not quote it here about confidential information?
- Thomson suggested that something about punishable under applicable law...” could be added because those laws could change.
- Wilson-Okamura noted that he is worried that we are moving a fence without knowing why we put it there, noting that a solution that Altman and Ingalls had would be to put the statute language in place there, at least adding the section number, or put “refer to general statutes.” It would be unlikely that statute number will not change, but wording could. He noted that maybe we should not delete it.
- Thomson asked-- is this a situation where somebody knowingly and willingly hands over a document and then realizes that they should not have done so, but if they address it then they won't be disciplined, but if they don't they will be disciplined?
- Newhard noted that an honest mistake could be made, that they did it willfully is the issue
- Altman noted that willfully is problematic—and called the policy “absence of malice.”
- Newhard stated that the sentence about secret files is weird as worded; it would help to spell out what that means.
- Wilson-Okamura talked about how we don't need to enumerate everything in statutes, but some are concerned that chairs and others are not going to know everything in statutes, but we are not defining everything in secret files, so we are trying to clarify without writing out everything again.
- Martinez told the committee that administrators are keeping secret files; they are used for their own use for which a faculty member is not told that the file exists and is not part of their personnel file. The faculty member does not know it exists and cannot respond and the content of the material has not been looked at to protect faculty member's due process.

- Newhard observed that it seems that the focus needs to be on content. If confidentiality is mishandled then that is an issue and other files could be secret, but not confidential.
- Wilson-Okamura asked - could we state that administrators must notify faculty members of complaints in a timely manner and allow for due process? Or notify faculty members of complaints in a timely manner that allows for due process?
- Altman postulated—isn't that already in the faculty manual?
- Martinez said yes--it is in several places. Her understanding is that this came from the settlement of a lawsuit regarding this type of issue.
- Wilson-Okamura asked Martinez--given what you said that this still happens, do you think it will make a difference to say something about it in this section of the manual?
- Martinez said yes because of the secret files.
- Altman shared the part about confidentiality from the UNC system (See the link below). <https://hr.unc.edu/employees/policies/shra-policies/ee-relations/confidentiality/>
- Wilson-Okamura noted that the issue is that it is not that you have the document, but the issue is that is used in evaluation.
- Martinez noted that the issue is that a document is not correct etc. and the faculty member cannot respond. She said the issue must be investigated and the faculty member must be able to respond to the issue. She and Wendy Sergeant (Sergeant) have talked about how a unit administrator goes from receiving information, to scaling up information, and documenting information, always keeping records of problems so that they can be properly documented. This is not appropriate in an annual evaluation. Sergeant and Hudson also have a lot of experience and talk to chairs.
- Wilson-Okamura asked Sergeant for her input.
- Sergeant says that she understands that from a policy standpoint, a statue is a statue. It is odd to have the term secret file in there and that is why they took it out. An educational component could be helpful, and it could be a place to provide the definition of a secret file. Is it more of an educational component than a policy? It has been in the faculty manual, and we are still having issues, so she asked--do we need to put it somewhere else where it would get more attention? She liked the idea of getting the OFE involved.
- Wilson-Okamura said that his sense is that the committee sees a problem, but is not quite sure how to proceed. He asked if there is language that succinct that prohibits, etc.? He noted that the OUC was consulted for that purpose, but it was not provided.
- Altman showed the FGC the UNC system confidentiality part, noting that this goes beyond faculty members.
- Martinez said that she wants to make sure that she does this right; there is a tension with university lawyers. The lawyers have a distinct preference for removing the information from the faculty manual, but faculty senate chair have fought to keep as much information in the faculty manual as possible. She noted that UNC Chapel Hill has a faculty manual of is 10 pages because everything is at PRR and NC State has a short faculty manual, too. She said that if we remove it that she wants us to be really sure that it is unnecessary, etc. but that nothing is done to take away the faculty manual as the main resource for the faculty to use to lead their professional lives.
- Wilson-Okamura noted that he thinks that the FGC has gone around on this and taken a vote.

- He said that we could take a vote and pass it on, but recommends that we do that at the beginning of our next meeting. He asked the committee to think about secret files and see if there is a way to articulate that, noting that we could approve it now, but we would have some ragged edges.
- Altman noted that the sub-committee will refine what they did, but they do not have to do anything further. She thinks this is cleaned up.
- Newhard noted that there are 2 diff cases: #1 -prevent confidential information from leaking out; and #2- other information kept in a secret file and used in a personnel decision illicitly. He thinks these are two very different circumstances and thinks that if we are going to address this in the faculty manual that we need more than one short sentence.
- Wilson-Okamura observed that we have something on confidentiality at the end of the section, but not on secret files and he is going to think about this item.
- Susie Harris (Harris) stated that she is, as a program director, taking in every word. She does have concerns about the wording. She is interpreting that it is okay for a chair to keep a secret file unless they use it against a faculty member, but noted that why else would they have one? She thinks the wording needs a bit more tweaking. Secret files throws up a negative aspect. She proposed that we bring it up when we are fresh at our next meeting.
- Wilson-Okamura asked if anyone objected to coming back to it? (No one objected).
- Altman asked if we could come back with ideas about it. She asked about providing ideas for different ways to deal with it, such as putting it in a different part of the faculty manual, etc.
- Wilson-Okamura said that he is I am certainly going to work on this item I am going to come up with something.
- Stacey said that sounds good.

#### 4. Suggestions for auditor Wayne Poole on proposed Code of Conduct.

In the agenda Wilson-Okamura wrote: We've discussed this in somewhat general terms already. Poole would like formal advice from our committee by Apr. 1, so please review the attached draft ahead of time and propose concrete changes where you see the need. A set of documents comparing the codes of our peer institutions has been uploaded to a folder in Teams.

- Wilson-Okamura asked for concrete edits.
- Martinez has received a healthy number of emails expressing their concerns. They express views that are very similar to discussions taking place in this committee. It seems like it was a good idea to put it out for faculty comments, especially about the freedom of speech. Regarding the free speech issues there was great potential for abuse, employment actions against you, social media, criticism, wrong attitude, criticism that university perceives is damaging, loss of academic freedom, etc.
- Wilson-Okamura asked for others' views. He said that they had suggested edits and in general in suggested the following to Wayne: #1—shorten the document—the danger in a long list of rules is that no one will read them; #2—a code of conduct should be a code of conduct not a code of attitudes, but not what someone knows or supports or demonstrates respectfully. It needs to be limited to what employees do. He asked if other agreed.



- Gomez said that yes, he agrees as it is about what you do not about what you feel.
- Martinez said that she got feedback such that folks think it is pseudo-legal language that is not easy to understand. She argues that it should not be approved. People are saying no to it. When they read the code the impressions that they get are negative.
- Wilson-Okamura asked how should we as a committee deal with this item? Line edits? Other ways?
- Gomez asked that whenever we do faculty evaluations, we need to show that we have read the code of conduct? He noted that if we must do that every year that it seems nonsensical. We need to be aware of it every year...it seems what is the point of that when you can easily just refer to it in the report and review process?
- Wilson-Okamura said that it does not say we need to bring it up; we need it on file for the federal government, etc.
- Altman noted that she thought this was referring to the professional ethics piece.
- Gomez said yes.
- Wilson-Okamura said that he does not think we are going to get through with this today. I will send around the edits I made and see what people think.
- Newhard noted that he thinks Mark made his point last time about adhering to the highest ethical standards. It is kind of ridiculous if folks adhered to highest ethical standards all the time. In that case, as soon as he read it, he is going to dismiss the rest of the document. He thinks it needs to be rewritten.
- Wilson-Okamura said that he addressed that in his edits will circulate his edits.

5. Post-tenure review clarifications needed. See attachments on post-tenure review and 5-year plans.

- Wilson-Okamura stated that the College of Arts and Sciences is gearing up for another post tenure review and has questions. In part IX it says what they should have a 5-year plan, but which one –the last 5 year or the next 5-year plan? He thinks we can fix that by saying next 5-year plan. They said that there was ambiguity in creating a 5-year plan. He drafted a fix for that and drafted language that would remove ambiguity and make it clearer. He noted that this is a resolution and there is not a clear process to rescind the resolution. He asked if we wanted to take the faculty senate's time on this issue.
- Ticknor noted that she went through the process, and it was a complete disaster. They picked an arbitrary date; it was a strange, confused process. She thinks there is quite a bit of ambiguity about this process.
- Gomez agreed. He just congratulated a recent tenured faculty member and he had to say that in just about 2 more years you must do your 5-year plan. The process does not match a faculty member's work, it matches the university's plans. It is not a true 5-year plan for some people.
- Wilson-Okamura asked for other comments.
- Ingalls said that she could give us history or perspective. She noted that when we had the performance review of post tenured faculty mandated by the board of governors, each institution had to develop a policy and send it to the system; one of the things was in terms of the timing. We could have the block plan where everyone goes up in the same 5 years and some units did a serial plan, where some portion of the faculty came up every 5 years, approximately 20% of the faculty would be reviewed each year. Both plans were

allowable, but not in a unit at the same time. In Harriot, some departments are on different schedules; the schedule was not mandated by the vice chancellor or provost. Therein lies the problem for a faculty member getting tenure and you are on a block plan. For example, one gets get tenure in 2022 and your unit goes up in 2023-24 and you cannot wait to do that because it would end up being 6 years and the board of governors requires 5 years. Tenured faculty members in a unit can vote on the process, serial vs. block. The 5-year plan that you are reviewing is the preceding 5 years; it is the plan for what you wanted to do during those 5 years because if you look at what you want to do in the next 5 years, what are you reviewing? Remember, you are reviewing a 5-year performance cycle.

- Martinez noted that you are looking at 5 years past for annual evaluation and looking at the next 5 years.
- Ingalls said she is right, but you would have a 5-year plan from the cycle that was being reviewed. The intent was that the faculty member had a lot of control over what they wanted to do for the next 5 years. Tenured faculty on the review committee do not have a say in what you develop in your plan.
- Wilson-Okamura said he thinks that there is a lot of ambiguity.
- Ingalls asked if we had looked at minutes during that time period revising part 9 section 2. The Faculty Senate chair also was on UNC committee. It was Catherine Riggs, and she also believes Andrew Morehead was involved in it. She believes Catherine was very involved in revising the policy. She also thinks Marilyn Shearer was on it. It sounds like we need to review the minutes.
- Altman noted that the first time it was implemented the faculty member would not have had a 5-year plan to look at during the first review. You would now have the plan for the past 5 years and the one for going forward for the next 5 years.
- Ingalls noted that it would be to review materials to see how it went and at the same time you are developing a plan for the upcoming 5 years.
- Martinez said that she was going to mention that in the faculty manual that there might be some language that we need to clarify, such as that the review is primarily based on a comprehensive review of teaching, research, and service of fac member.
- Wilson-Okamura said let's see if Baker can help us, but looking back at the minutes. He thanked Ingalls for her input and information.

## 6. Other business.

### Anticipated business for March:

- Proposed Faculty Manual revisions from the Fixed-Term subcommittee
- Report from Departmental evaluations and workload subcommittee (Altman, Bowler, Ticknor)
- Elimination of obsolete VC titles from Faculty Manual and Bylaws.
- Before we eliminate the VC for Research, Economic Development and Engagement (formerly the VC for Research and Graduate Students), someone needs to figure out who will be ECU's designated Integrity Officer and Deciding Official.

### The meeting adjourned at 5:00 pm

The meeting minutes are respectfully submitted by Cynthia S. Deale