

UNIVERSITY OF DELAWARE  
NEWARK, DELAWARE  
19711

UNIVERSITY FACULTY SENATE  
303 HULLIHEN HALL  
PHONE: 302-738-2829

March 11, 1977

MEMORANDUM

TO: All Faculty Members

FROM: Byron P. Shurtleff, Vice President  
University Faculty Senate

SUBJECT: Special Senate Meeting, March 21, 1977



In accordance with Section IV, paragraph 6(2) of the Constitution of the Faculty of the University of Delaware, a special meeting of the University Faculty Senate will be held on Monday, March 21, 1977 at 4:00 p.m. in room 110 Memorial Hall.

AGENDA

- I. Resolution from the Faculty Welfare and Privileges Committee (J. Magoon, Chairperson) that the Senate approve the following revisions to Section III-N-I and III-N-II to the Faculty Handbook.

RESOLVED that the Senate approve the following revisions to Section III-N-I and III-N-II to the Faculty Handbook.

Bracketed material has been deleted  
Underlined material has been added

N. TERMINATIONS AND NON-RENEWALS

1. Terminations

A clear understanding of the terms of the contract between the faculty member and the University is a prerequisite for a harmonious relationship. Within the terms of his contract, a faculty member at the University of Delaware is assured that an appointment will be terminated only for adequate cause--incompetence, gross irresponsibility, or moral turpitude--except for retirement because of age or termination caused by extraordinary financial circumstances.

Faculty members shall be terminated for cause only after being afforded a hearing before the [ faculty or an appropriate group of faculty of their department/unit. This body's advisory decision may be appealed within ten working days to the] Senate Committee on Faculty Welfare and Privileges. Faculty members shall be informed in writing, at least two weeks prior to the hearing [s], of the reasons for the proposed termination, shall have the opportunity to be heard in their own defense, [ by all bodies or individuals who pass judgment on the case, ] and shall be permitted to have advisors of their own choosing from within the University in their presentation[s]. This committee shall render its advisory decision to the appropriate administrative officer within 14 working days after [ receipt of the appeal. ] the hearing. In the case of termination for cause, the burden of proof in the proceedings rests with the party or parties bringing the charge(s). In the case of proposed termination for moral turpitude, faculty members may be temporarily suspended [ while hearings are held ] in the event that their continued presence at the University would constitute a clear and present danger to the health, morals, or safety of members of the University community until the final decision is rendered. Termination for cause [not involving moral turpitude or gross irresponsibility ] shall become effective after one year's notice of the final decision to terminate; however, the effective date for termination involving gross irresponsibility or moral turpitude may be immediate.

## 2. Non-Renewal

Proposals for the non-renewal of faculty members' contracts, and the reasons for them, shall be reviewed by the faculty or an appropriate group of the faculty of the departments/units concerned. The written [opinions ] recommendation resulting from such review shall be taken into consideration by all the administrative officers concerned before a final decision is made. Faculty members shall be given notice in writing of the decisions and the reasons for them.

In the event of a decision not to renew, the faculty member shall have an opportunity to request a timely reconsideration by the decision-making body. A faculty member who alleges that academic freedom has been violated by the decision-making body, or that the decision-making body did not give adequate consideration to the circumstances, may petition the appropriate faculty committee. Notice of non-renewal will be given in accordance with the following standards recommended by the Faculty Senate and approved by the administration.

[ Notice dates follow unchanged in the Handbook ]

The provision of the Constitution of the Faculty dealing with special meetings states:

"The call of a special meeting shall state the purpose or purposes of the special meeting and no business shall be transacted other than that specified in the notice of the meeting."

FACULTY HEARING PROCEDURE  
FACULTY WELFARE AND PRIVILEGES COMMITTEE

This hearing is being held by the Faculty Senate Welfare and Privileges Committee for the purpose of securing facts and information relative to certain charges of misconduct that have been made against Professor \_\_\_\_\_. After its investigation the Committee shall present its findings and recommendations to the Provost of the University.

- I. The Hearing--this is a closed hearing. Attendance is limited to the following:
  - A. The initiator; and one advisor.
  - B. The respondent; and one advisor.
  - C. One observer selected by the initiator, and one observer selected by the respondent, provided that each selection is approved by the Chairman of the Faculty Welfare and Privileges Committee.
  - D. The members of the Faculty Welfare and Privileges Committee and their supporting staff.
- II. The Hearing Agenda
  - A. After the hearing is called to order by the Committee Chairman, all parties shall be identified for purposes of the record.
  - B. The Committee Chairman shall read the charges against Professor \_\_\_\_\_.
  - C. The Committee Chairman shall review the hearing procedures which are as follows:
    1. Questions shall be limited to members of the Faculty Welfare and Privileges Committee, the initiator, and the respondent.
    2. Witnesses shall be present in the hearing room only during the time of their testimony. A list of all witnesses to be called by any party must be presented to the Faculty Welfare and Privileges Committee Chairman and the other party or parties to the hearing at least five days in advance of the hearing itself. It shall be considered improper for there to be any communication between witnesses and the committee, initiators, or respondents after the hearing has commenced.

## II. The Hearing Agenda (contd.)

3. Those presenting questions shall limit their inquiry to events relating to the charges and shall refrain from presenting arguments and points of view until their "summary" as provided in the hearing agenda.
  4. The Faculty Welfare and Privileges Committee Chairman shall preside over the hearing and shall rule on all procedural questions including objections presented by the Committee Representative, members of the Committee, the initiator, or the respondent; and requests for caucus periods (no longer than five (5) minutes).
  5. The Committee Representative shall call all witnesses from the witness list and shall initiate questions on behalf of the Faculty Welfare and Privileges Committee, though, as recognized by the Committee Chairman, any Committee member may ask questions during the time allocated for Committee questions.
  6. All documents dealing with the substantive issue in this case, data, and written statements presented to the Faculty Welfare and Privileges Committee shall be given a reference number and be made available to all parties. A list of such documents, etc. received by the Committee shall be prepared by the Committee Chairman and distributed to all parties including members of the Faculty Welfare and Privileges Committee.
  7. A transcript and a copy of the Committee findings together with Committee recommendations to the Provost shall be supplied to all parties.
- D. Questions of procedure not previously considered shall be presented after the Chairman has concluded his review.
- E. Order of witnesses and questioning.

The initiator \_\_\_\_\_.

## II. The Hearing Agenda (contd.)

- a. questions by the Committee representative and Committee members.
  - b. questions by Professor \_\_\_\_\_.
  - c. further questions by the Committee representative and Committee members.
2. Witnesses requested by the initiator
    - a. questions by the initiator.
    - b. questions by the Committee representative and Committee members.
    - c. questions by Professor \_\_\_\_\_.
    - d. further questions by the Committee representative and Committee members.
3. Professor \_\_\_\_\_, the respondent
    - a. questions by the Committee representative and Committee members.
    - b. questions by initiator.
    - c. further questions by the Committee representative and Committee members.
4. Witnesses requested by the respondent
    - a. questions by Professor \_\_\_\_\_.
    - b. questions by the Committee representative and Committee members.
    - c. questions by the initiator.
    - d. further questions by the Committee representative and Committee members.
5. Witnesses requested by the Committee
    - a. questions by the Committee representative and Committee members.
    - b. questions by the initiator.

II. The Hearing Agenda (contd.)

- c. questions by Professor \_\_\_\_\_.
  - d. further questions by the Committee representative and Committee members.
6. Summary statements by the parties.
- 1. The initiator
  - 2. Professor \_\_\_\_\_.

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FACULTY WELFARE AND PRIVILEGE COMMITTEE COMMENTS  
ON THE  
REVISED HANDBOOK SECTION III-N-1, 2

The Faculty Welfare and Privileges Committee feels that the following points need to be made about this revision of Handbook policy III-N-1 and 2. On May 10, 1976 the Senate approved essentially the same policy statement. The University of Delaware Board of Trustees Committee on Education and Training rejected this revision at their Fall meeting, mainly on the grounds that the hearings in termination cases would be too drawn out. The major change in the proposal below removes a mandated hearing for faculty at the department or unit level, and simply requires that the Faculty Welfare and Privileges Committee hear the case. It is our assumption that the Faculty Welfare and Privileges Committee would usually be in the position of carefully reviewing decisions made at a lower level, though not always. The Faculty Welfare and Privileges Committee can function under these new guidelines, although often the burden of organizing the whole case will rest with the Committee as it has in a present instance this year. A second minor point that a few of the Trustees raised concerning the phrase "the burden of proof in the proceedings rests with the party or parties bringing the charge(s)." The University Counsel has informed the Provost by letter that such a phrase is quite appropriate in this policy statement. The remainder of the changes from the May 1976 policy are minor wording changes in keeping with the simplified hearing route or in attempting to make the statement less opaque.

An issue that has absorbed enormous amounts of Faculty Welfare and Privileges Committee energy this year has been the arrangement of hearings on charges of gross irresponsibility that have been placed against a faculty member, and especially the role of legal counsel in these proceedings. Current Faculty Handbook policy specifies that in such proceedings the faculty member may be accompanied by "advisors of his/her own choosing," and the Committee has agreed that one of these advisors might be a lawyer. Under the old Handbook policy the lawyer could be present for brief advisement but would not have an active role in the hearing. We have attached our current hearing procedures (with the names of the accuser (initiator) and the accused (Professor \_\_\_\_\_)) that established the format for the actual hearing. We have not indicated the several dozen communications that have preceded this hearing, several of which were requested by the Committee as a form of quasi-legal "briefing." These briefings offered the opportunity for rebuttal to the charges and clarification of the issues involved, and are a real but unseen part of the total procedure.

The committee, as a result of this, has some experience with an actual hearing, but has no strong predisposition toward including legal counsel for the accused at internal University hearings. The Committee could very likely learn to live with any policy statement whether they explicitly included or explicitly excluded legal counsel or simply left the matter unclear (as the present Handbook policies and/or procedures do). Given that any of these possibilities could be construed as a "fair hearing by peers," then future Faculty Welfare and Privileges Committees would probably welcome the simpler policy which afforded that prompt and straightforward hearings would take place. We have little experience at this University to guide us in these matters, and hence, we have chosen the simpler expedient of limiting advisors to persons from within the University in the revision below.