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**MINUTES of AAUP Executive Board meeting**

**Monday 3 February 2021, 10 am to 11:30 am**

Three priorities in the current AAUP strategic plan:

1.     the escalating division of insecure academic labor

2.     reductions and restructuring of public funding and budgeting processes

3.     the increasingly hostile environment affecting students and faculty

Our mantra is “refuse austerity.”

#### https://washington.zoom.us/j/93610086550 or One tap mobile

#### +12063379723,,93610086550# (Seattle)

#### Board member attendance: Eva Cherniavsky (president), Rachel Chapman, Jim Gregory, Amy Hagopian (Secretary), Jay Johnson, Louisa Mackenzie, Diane Morrison (treasurer), Annie Nguyen (membership secretary) Duane Storti, Rob Wood

#### Guests: Zoe Barsness (Faculty Senate past chair), Robin Angioti (Faculty Senate Chair), Chris Laws (VC faculty senate), Jack Lee (Chair, FCFA), Michael Townsend (Secretary of the Faculty), Amanda \_\_ (staff to the code revision drafting group)

#### Absent: Charlie Collins, Abraham Flaxman (VP), Aaron Katz, Nora Kenworthy, Ann Mescher

**Agenda:** Discussion of questions and concerns regarding the proposed revisions to Faculty Code language on grievances and disciplinary proceedings

**Minutes**

Eva Cherniavsky, as chair, facilitated the presentation of AAUP concerns regarding the Faculty Senate’s efforts to revise the Faculty Code on discipline and grievance policies.

We met today with the Faculty Disciplinary Task Force on Faculty Discipline and Dispute Resolution, co-chaired by Mike Townsend, Secretary of the Faculty and Associate Professor in the UW School of Law, and Zoe Barsness, 2016-17 chair of the Faculty Senate and Associate Professor in the UW Tacoma Milgard School of Business. The Task Force is made up of a Steering Committee, which oversees two work groups: Values and Principles, and Legal and Regulations (aka the “Drafting Committee”). More details here: https://www.washington.edu/faculty/senate/faculty-disciplinary-task-force/

Note: Currently, grievance and disciplinary proceeding are both housed in UW Faculty Code Chapter 28; the revision committee has decided to separate them out -- moving grievance into Chapter 27, while keeping discipline in Chapter 28. The only legislation currently scheduled to come before the Senate (for discussion at its 25Feb2021 meeting, 2:30 pm) is the new version of chapter 27 (on the grievance process).  The revision of ch 28 (on discipline) has not yet been tackled/drafted and is not currently being debated.

To sum up, the AAUP board registered these concerns about the Chapter 27 revisions currently proposed by the drafting committee:

* The lack of an equity lens or framework in the revision process
* The right of the UW President to veto any findings of an adjudicatory body
* The lack of power of a grievance review panels to create a remedy
* The disenfranchisement of faculty on sabbatical, particularly problematic in small units
* How Section 25-71 of the Code has been used to harass faculty, particularly women and BIPOC faculty (with focus on the lack of any requirements for evidence of wrongdoing)
* The limitations on “punishments” a chair can impose on faculty, and the lack of review of these weapons

1. **The provision that the president can veto any rulings of decisions of the adjudicatory body**. There are some guardrails, but perhaps not sufficient. In the revision, the president must at least present some rationale, and must consult with the Faculty Senate Chair. While this is an improvement, the extent to which this is a real check on presidential power depends on the quality of faculty senate leadership. This is potentially not a very effective check. The core concern is that the existence of the veto is out of line with the fundamental principles of due process. Why the choice to retain the presidential veto?
2. **In the case of a grievance, a panel has the right to make a determination whether an injustice occurred, but they do not have the power to create a remedy**. We discussed the tradeoffs of values in resolving problems that require a do-over. When a unit fails in its tenure or promotion decision processes, for example, an adjudicatory body often still honors the important role of the faculty unit to make these decisions and asks them to repeat the process. Unfortunately, this typically conveys power on an Chairs and Deans who were likely involved in creating the violations that caused the original grievance to occur. Sending a case back to the same administrators who inflicted the damage is unlikely to result in a satisfactory resolution.

We presented the case in Tacoma, which included

* illegal ballot (the ballot included the choices: YES/ NO/ POSTPONE),
* mishandled materials: outside letters were made available to the candidate for promotion in the first round, requiring the solicitation of 3 new letters, and after the re-do ruling, 3 ADDITIONAL letters will be solicited,
* results of the vote never reported to the candidate.

The faculty member won the case in adjudication, but the ruling was to send it back to the unit, directing the people against whom he grieved to re-do their process, on an abbreviated timeline, with three new outside reviewers (now for a total of 9 reviewers), thus compounding the damage, not remedying it. A note on the number of external promotion reviewers: The more reviewers you need, the more remote they will be.

Also, there is nobody whose job it is to oversee the redo process. If a violation, the remedy cannot be put in the same administrators who inflicted the harm in the first place. Equity does not comport with sending the process back to the unit. Seven voting members, 2 on sabbatical🡪outcome hinges on the accident of who is on sabbatical.

1. **Disenfranchising faculty on sabbatical**. In small units, tenure and promotion outcomes can hinge on who is on sabbatical when the vote occurs. For example, when those of us who champion DEI work are on sabbatical, that voice is not included in the deliberations. (Louisa presented)
2. **25-71 has been used to harass faculty**, particularly certain types of faculty. We expressed concerns about the lack of a role on the drafting committee for someone from the **Faculty Council on Women in Academia (FCWA) or the Faculty Council on Multicultural Affairs**. Why are these units left out? Where is racial equity in this process? The history of how this issue came to the urgent attention of the Senate suggests both these units might have been centered in the drafting process.

Specifically,administration sought to erode the ways in which faculty could remedy concerns. The new language doesn’t center the goals or values of restorative justice, it’s completely punitive. “Workplace violence,” the heaviest stick in the toolkit, has been contorted entirely away from its original meaning, and is now weaponized against activist faculty. This Code should be used to protect women and POC.

We’d like to see some checks on abuses of power in the Code revision. The chair should first have to demonstrate the wrong-doing. These charges are brought, acquire a momentum of their own, and have career limiting effects. The severity of the consequences for the accused are significant.

Informal conflict resolution processes should precede formal charges—that would curb the power the chair. Who do we have to turn to in this university to help with these processes? The ombuds office is small, and has limited tools. for mediation? Further, the Ombuds office isn’t structured to provide justice, especially in the context of race, class, gender inequities. (Rachel presented)

1. We have seen anecdotal and observational evidence that women and bipoc faculty have been disproportionately accused under 25-71. AAUP and Faculty Forward have asked for data on this, but **the UW does not collect it or report 25-71 data in any systematic way**. That is alarming, because now we cannot prove what we suspect is a pattern of disproportionate use. (Eva presented)
2. Chairs can harvest and weaponize student complaints; we are aware of a chair’s office who directed a student services counselor to advertise listening sessions during COVID; when students mentioned an area of dissatisfaction with a faculty member, they reported to supervisors and urged students to file grievances. It is **improper to** **systematically solicit, curate and weaponize staff and student complaints** about a faculty member. (Amy presented)
3. When faculty are disciplined in response to student complaints, **faculty should be able to know the content of these complaints**? In one case, a Chair withheld complaints that would reveal the identity of the student complainants, claiming the students’ identities were FERPA protected.  This can place the faculty member in the impossible position of having to defend themselves against vague and decontextualized (and verbally summarized) charges.  FERPA covers a student’s right to privacy with respect to their personal and academic information.  Is FERPA a reason to withhold evidence from a faculty facing disciplinary charges?  The right to know and to face your accuser is a basic tenet of due process.  Does FERPA trump due process? (Amy presented)
4. The Code should place **limits on the range and types of punishments a chair or dean can impose**. Can they ban a faculty member from attending faculty meetings? Can they unilaterally declare a faculty member non-meritorious without a vote of their colleagues? Is there any requirement the punishments be related to misdoing? What level of evidence must be produced? Can punishments violate the faculty code?

Discussion:

Zoe Barsness-thank you for your robust and thoughtful review of the materials, and for engaging in a prospective analysis of what has come to your attention on the disciplinary front. That will be helpful. Some of these have come up already, we haven’t landed on clear answers. In response to Rachel, **we realized our oversight on equity and diversity issues, and we had sought extensive review from Chad Allen (associate vice provost for faculty advancement),** and we will be bringing it to FCMA and FCWA this month. One of the motivating values for this work was to highlight equity and diversity, emphasizing that in regard to the shortcomings in the current language is that we bring fairness, ethics, transparency. Our aim was to provide a system structured and scaffolded to eliminate inconsistencies and biases and provide a system that generates data. When we write Chapter 28, **we will create a committee, much like in the student conduct code, to oversee and monitor, and generate a dashboard of metrics**. That will allow us to find systemic bias and find solutions. That will give us a body charged with the responsibility to recommend continuous improvement. We need data and awareness.

Zoe- There is accountability lacking in our current system, along with a missing space for problem solving. Mediation vs. arbitration. We need to create a space where we offer an explicit and scaffolded **process that starts at lower levels**. We created a 2-level unit review to have a space for problem solving, **and to allow Faculty to challenge administrative decisions**. The chair has to come back to the table to explain and make rationale for their decisions. The suite of tools in the ombuds office includes only voluntary mediation and conciliation. There is no third-party decision making without going outside the ombuds office.

Mike Townsend-With regard to the presidential veto, we’d like to address your concerns. When I started as secretary, my first challenge was a 25-71 case, and was horrified. **The wording of 25-71 has been completely misinterpreted**. Second, more troubling, we see a poor attitude or climate in the provost’s office about grievance and discipline. I spent some time in the provost office trying to address the latter, and that just wasn’t going to work. Motives? Inertia? Tunnel vision? Trying to work on climate and attitude wasn’t going to work. Zoe was chair at the time, and I said I thought we had to rewrite the code. Zoe came at it from the point of view of the recent changes to student conduct code. Some constraints in the language were needed, I felt, because culture wasn’t sufficient. In my view, **there is so much wrong with the way the discipline and grievance process is viewed in the provosts office.** There were so many **things I think are flatly illegal, as an attorney**. I do think we are perfectly aware there are issues with attitude and the way people think on the 3rd floor of Gerberding. Its going to be a long process, there is so much that needs to change in climate, a change in view of how administration interacts with faculty. Administrative level faculty are no longer colleagues, they are in the roll of traditional bosses. We are on the same page, therefore, in terms of sharing your skeptism. We may not be moving in the same directions you’ve raised here, but not because we’re not interested.

Mike- **This is in part a political process. We want the change to get through—which requires presidential approval**. That constrains our ambitions. In that sense, you are very important. The 3rd floor could draw a line, so if the next push came from the outside, that would help raise the concerns. That requires some wind behind our sails. It’s helpful to have you putting pressure on us.

Mike- I’ve not been happy with how even our current president exercises the presidential veto. Is the AG’s office involved? Does she do it on her own? In tenure and promotion, the president gets personally involved, she has reached out to me on input. **I’ve not been impressed with presidential veto decisions**. Could we eliminate the presidential veto from the Faculty Code? Hm. The legislature creates the UW, which delegates authority to Regents, which delegates authority to the president, who delegates some portion of that authority to the faculty. One way of thinking about this is **whether the Regents would let the president delegate the authority for complaint resolution to the faculty**. The regents would probably have to approve that. The role of the presidential veto is to provide a check. In lieu of that, we’d need an appeal process. We tried to strike a political balance, so Margaret Shepherd (the President’s Chief of Staff) doesn’t suddenly intervene.

Mike, on punishments- the plea bargain letters include punishment, as well as ham-fisted attempts to improve job performance. Other than some minimal thing like a letter of reprimand, **administrators should have to confer with us to assemble a menu of suitable punishments**. And **punishments should be subject to a faculty panel review** (without requiring the filing of a grievance).

Mike, on Chapman’s concern- Rachel raises the issue of the day. **The idea of institutional racism and inequities, this has to be a primary bullet point on everything we look at, from hiring through discipline**. If that isn’t our first bullet point, it won’t eliminate the problem. We may have fallen into our own trap, though. The major issue for our university is how are we going to change all of these structures we take for granted and look at them anew. We messed up on that, and did ask Chad, but we need more input on that aspect of things.

Annie in chat- I'm not sure if I'll have time to ask my questions/comments, but first, the way this code is written, it seems to work from the presumption that faculty are assumed guilty, not innocent. Building on what Michael is saying, the university here seems like an employer and the students are clients and faculty are just the customer service employees (as in the case we reviewed today specifically).

Annie- I worry about **how student complaints disproportionately affect women**. The way it’s phrased now, the faculty are in defense mode from the get-go. If faculty members are being driven to incur legal costs, it’s a message that faculty aren’t valuable.

Rachel- The case we reviewed today sets unacceptable precedents. She’s already signed it, but it’s dangerous for all of us. That case stops us in our tracks. What do we do now? Can it be undone?

Rachel- Also, it is **unacceptable to point to one person to represent DEI issues**, someone chosen by admin for their willingness to walk through the world in power and privilege. If we are talking about a decision of an administrator, we are talking about an appeal way past when a change is made. The burden of evidence should come first. You don’t get to write a letter making charges, which will stay with them… The model was in feudal times and slavery: “Go get your stick with which I am about to beat you.” How do we make the stick we choose least painful? We lose so much. If someone can sit in a meeting and say we are done, then why are we here? If someone can tell you you are done (Margaret Shepherd), then we are in a losing game.

Mike- **maybe we are being overly cautious**, I was worried about pushing to the point where the whole thing falls apart. She can veto the legislation itself, not just an adjudication.

Mike re. student complaints- we don’t have structures that address equity. So these concerns get shoved into the structures we do have. **When students have a concern, the only lever they have is to file a complaint**, so they use it. There is a tendency to view the faculty as guilty, which is doubly troubling with the lack of access to affordable attorneys. By contrast, administrators have “free” attorneys through the attorney general’s office. If we don’t create mechanisms for dealing with these issues, we will pay the price elsewhere.

Duane in chat - I am very concerned about the potential to lose the ability of the panel to recommend specific relief as spelled out in 28-54 B: Here is some key text from 28-54B: "It [the panel] shall also state specifically any action necessitated by the decision and identify the specific relief to be provided, including but not limited to suspension or dismissal, reprimand or warning, restoration or award of privileges, benefits or status, a cease and desist order, an order that a certain party receive counseling or other medical treatment, and including direction to the Provost or other appropriate party to take such steps as may be necessary to carry out the decision."

### Duane- thanks for working so hard on this. There were three things I read which contradict Code Section [28-54B](http://www.washington.edu/admin/rules/policies/FCG/FCCH28.html), Comprehensive Adjudication—Decision. The panel is not empowered to recommend relief; this is a huge potential loss.

Jack Lee- what’s in the current code is also that the panel makes recommendations. We were les specific about what the panel can recommend, but we didn’t actually place limitations on what the panel can recommend. In the case of tenure, we can’t empower a 3-member panel to award tenure. It’s a delegated power from the Regents. Instead what we have is a situation where tenure is voted by the dept, it goes up the ladder is either is denied by the dean or provost. They have to justify those decisions, and the panel can decide whether those grounds are permissible. They are supposed to give specific instructions in the remand—you may not consider this criterion or use this impermissible process. As long as the president holds this power, we cannot prevent them from reversing the decision.

Duane- Can we at least allow the panel to make the recommendation, since the president can overrule in the end anyway? There are other contentious issues, such as endowed chair status. The panel should be able to reverse those decisions, even if the president can veto.

Rachel- it’s a punitive process. Does a college council have a role in considering the abuse of power? There should be a sanction there, without it going back to the same people. Why can’t we empower some entity to declare a dept is not acting in good faith? When the people who have abused power, we should be able to move decisions to college council. I don’t see where it’s not admin itself who is defining injustice. These processes should be all about justice. Can justice happen here? Can community be created here? The present process destroys community and creates distrust, creates a terrible environment.

Mike- In cases of promotion and merit, the panel could 1) award tenure; 2) recommend a decision or 3) send it to someone other than the administrators who made the initial decision.

Eva- Whatever the case, the supposed remedy cannot lie in the hands of the very same people who created the injustice in the first place. In the case of our Tacoma faculty member, his vindication lets him go through the ringer again! It’s literally a conflict of interest for the same people to conduct the do-over. There should be an actual structure that can step in. Not all campuses have faculty councils. So many different structures in each place.

Mike- if the panel found an injustice, a separate process in the code that provides an off ramp or parallel process to engage new people in a resolution.

Duane- when violating administrators create injustice, isn’t that a reason to remove them from their offices?

Rachel- the diagrammatic pathways start with a grievance and end in a punishment, for the faculty member, not the administrator. There should not be a punishment in that sequence.

Jack- When a faculty member brings a grievance against a chair, if it includes an accusation of Title IX or discrimination, the UW has to treat that as a matter for discipline. No appeal of a tenure decision should end in discipline.

Rachel- we are allowing de facto punishment, for example by having to hire an attorney. The process is punishing. No one gets to speak on your behalf (Eva was blocked from speaking on certain topics at the hearing for the Tacoma colleague). Eva noted the proceeding was formal and legal, she was limited to the content of her testimony. The faculty member could not afford an attorney.

Mike- you can win and be punished for winning, because the interpretation is as narrow as possible. When they lose it’s horrible, when they win it’s terrible. The first case I saw, the person had spent $20K just to be in the position of filing a petition for a grievance, and then just ran out of money. You’re talking several tens of thousands of dollars to file a petition, double that for a proceeding, triple to go to court.

Diane—getting 3 new letters now makes this person subject to weaker letters. That is punishment.

Mike- the president did reach out through Margaret, and I raised that issue. We’ll see what happens.

Amanda—what about a faculty liaison role? Would that alleviate concerns? Better than nothing?

Rachel—in a legal setting, you don’t come with your friend, you come with an attorney. Our family discussed the importance of losing our daughter’s inheritance to defend my career. We don’t talk about retirement in my household because we lost those assets.

Eva- you don’t turn up with a legal aid in court, you turn up with a lawyer.

Duane- There are good informal resources for people, but these are NOT a replacement for an attorney. Half the people on this call have served in this informal role.

Mike-on the disciplinary side, there could be a non-adversarial problem-solving mechanism.

--Secretary had to leave before the bitter end…

**NOTE: The faculty senate meets 2/25 @ 2:30 not to vote on but to discuss the revised grievance procedures.   This is the context in which we can bring forward concrete proposals for additional revisions.**

What follows is a list of matters on which we need to decide: **everyone's input is needed, so please read all the way to the end.**

1.  Robin suggested that to have an impact on 2/25, we would need to **submit specific proposals in writing in advance.**  It seems clear we want to intervene on the matter of**the grievance panel's authority**(the scope of what they can recommend) and on the question of what it means to send a case 'back to the unit' (are the same administrators who inflicted harm put in charge of delivering the remedy?)   I think we need a working group to draft our language: **Rachel, Duane -- would the two of you be willing to work on this?**  (I would be happy to join you, as secretary/editor, if that's useful.)

2.  **Should we also present a challenge to the presidential power of veto?** I'm feeling inclined to do so -- at a minimum, I think someone should have to explain why this is a power the president *should* have, which will never happen if we treat as a given.  But I can also see arguments against pressing this point.  Thoughts? **If we move forward on this one, we need Board members to draft this proposal.**

3.  **We will need Board members at that meeting who are prepared to speak.**I propose we take a few minutes at our 2/17 meeting to get organized (who will make what point).

4.  **Apropos our 2/17 meeting:**we have discussed running a **Town Hall on these code revisions.   Would we essentially make that into the topic of our April 23rd annual meeting?**  Our main agenda for the 2/17 meeting is to make some decisions about the annual meeting -- whatever we decide. we will need time to work out format, issue invitations, etc.

5. Finally, Jim Bakken had asked about coming to our meeting today to introduce Malori Musselman, our new regional rep.  I explained why today was not good for that -- they will be joining us on 2/17.   The link for our 2/17 meeting again is: <https://washington.zoom.us/j/93610086550>

Please share your thoughts on items 1 and 2 ASAP -- right now, 2/25 seems rather far off, but it will be here in a flash,  (I will try to find out the deadline for submitting written material  -- but I'm sure that need to be in a few days before the meeting.  So we do need to get moving on this.)

Zoom meeting candid camera:

