

FACULTY SENATE COMMUNICATIONS REPORT | 29 October 2015 meeting

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OVERVIEW

The 2015-16 Faculty Senate held its fifth regular meeting on 29 October 2015, from 3:45 to 5:35 pm in the (very awkward) Commonwealth Room of ADUC. The dominant subjects by far were the reconciled PAC-22 draft and the resolution on PACs and chair appointments initially proposed at the previous meeting. Consequently, these will be the major foci of this report. A few other matters were also addressed in relatively brief fashion, and these will be treated at the end of this report. Please note that the Provost was unable to attend this meeting, sending Dr. John Ernst in his stead; Dr. Ernst was present for the entire meeting, but had no official report to give. Finally, Faculty Regent Berglee's report was merely an announcement of the upcoming Board of Regents (BoR) meeting on 5 November 2015 at 9 am in the Riggle Room.

RECONCILED PAC-22 GETS ITS FIRST READING

Following a tremendous amount of painstaking work with the administration by the Senate reconciliation team, Senator Carlson brought forth the reconciled draft of PAC-22 for its first reading. This reconciled draft is the culmination of a process that began in March 2015 when the 2014-15 Senate passed its revised version and continued throughout the summer and fall. The PAC is an exceedingly long document, and so this report will attempt to provide a concise summary of the major changes from current policy (with line numbers in the revised document included for ease-of-access). Furthermore, given its length, the PAC-22 draft will be provided as a separate attachment rather than directly appended onto this report.

The reference for sexual misconduct has been adjusted to the recently-revised PG-6 and its accompanying UAR (lines 56-57). Throughout the document, any time frames described are now counted in "business days" rather than "academic days" (e.g., lines 68-69); this change was made at the insistence of the administration and counter to faculty preference. On a related note, an additional time period has been added to allow faculty members to prepare a formal written response to charges (from a "Notice of Intent") if they elect that instead of a hearing (see lines 165-166). This period is additional to the time allotted for initially deciding whether to elect a written response or a hearing.

If the faculty member receives a "Notice of Intent to Remove for Cause" specifically, that faculty member is now able to request either an evidentiary hearing from the Faculty Hearing Board (FHB) prior to a hearing with the BoR or a single evidentiary hearing before the BoR only (lines 136-139). To be clear, if a faculty member elects the hearing process, a BoR hearing is unavoidable, with the choice lying in whether or not an additional FHB hearing is included.

Finally, there has been a major technical change to the policy, namely a shift in the standard of evidence required for supporting the charges against a faculty member. More specifically, the language has been changed from "clear and convincing evidence" to "a preponderance of the evidence" (see lines 299-300 for an example of this change).

Discussion of the PAC-22 revision among the Senators was wide-ranging and thorough. The most significant point of concern was the lack of requirement for the university to provide the accused faculty member with actual evidence; instead, the accused will be provided with a "Notice of Intent [that] will include...a detailed statement of the charges and their basis..." (line 110). In fact, the accused faculty member would not actually see the evidence marshalled against him or her until the evidentiary hearing stage. Apparently, it is the administration's position that the burden to provide evidence should not be on them at such an early stage, and that providing evidence to the faculty member raises legal and confidentiality concerns. In response to a suggestion that language be added requiring the provision of relevant evidence, Senator Carlson stated that, based on her experiences during the reconciliation process, such language would likely be shot down by the administration.

There was also a fair amount of discourse on the change in evidentiary standard from "clear and convincing" to "a preponderance." It was noted that, from a legal standpoint, "preponderance" is a less stringent standard than "clear and convincing," although it is apparently the same legal standard that would apply in a civil court case. Nevertheless, Senators took notice of the fact that, while the university could choose to afford its faculty members a higher level of protection than legally required, the administration has changed the existing language to a lower standard.

Senators also expressed concerns about a lack of clarity in the overall time frame laid out in the document. It is not clear precisely how much time can elapse between the "Notice of Intent" and the hearing phase, minimum elapsed times are not required between the various stages, and the provision for "Extension of time" (lines 536-539) in special circumstances lacks specifics.

The combination of the above concerns led Senator Sue Tallichet to raise, more than once, the possibility that the university was setting up a potentially flawed internal process that could leave it open to external legal challenges from an accused faculty member.

The Senate will proceed with a second reading of the reconciled PAC-22 at its next meeting (5 November 2015). Senators were encouraged to come to the next meeting prepared with any suggested changes to the language; all faculty members are additionally encouraged to express any feelings they may have about PAC-22 to their Senator(s) as soon as possible.

OF PACS & CHAIR APPOINTMENTS II: THE SEQUEL

At the outset of this dialogue, Chair Adams reiterated the issue at hand is purely about process, and has nothing to do with the particular individuals involved. Chair Adams also provided some additional details on the two occurrences from the Caudill College that sparked this issue to begin with. In the first occurrence, the Dean asked for the departmental tenure/promotion committee to evaluate and approve appointment as full professor for the interim chair (then an associate professor) being elevated to permanent chair status, directing them to use section 12 of PAC-27 for justification. The relevant faculty approved the functional promotion, followed later by BoR approval.

In the second occurrence, a similar directive was provided from the Dean to the second department. However, in this case, the relevant faculty could not see how section 12 of PAC-27, or any existing PAC, provided for appointment with promotion at that time. These faculty members noted as much in a formal document given to the Dean, and were then asked by the Dean to reconsider their decision. During this reconsideration process, two of the five relevant faculty members “absented” themselves from the proceedings, and the full professorship was ultimately agreed to by the remaining three. This second case has not yet been approved by the BoR, but Chair Adams made it clear that the Senate has no intent (nor, indeed, ability) to block the action.

The resolution on this issue (see Appendix), proposed at the previous meeting to express the position of the Senate, was untabled and subjected to further debate. Much of the discourse focused not on PAC-27, which many seemed to agree does not explicitly support these promotions, but rather on PAC-24. There seemed to be widespread agreement among Senators that PAC-24 is poorly worded and desperately in need of revision. Furthermore, a few Senators took the position that the poor wording of PAC-24 leaves enough ambiguity for the administration to justify their actions in these occurrences. In general, these Senators opposed the resolution as unnecessary, instead advocating for opening and revising PAC-24.

It should be noted, however, that both the Caudill College Dean and the Provost cited section 12 of PAC-27 as their only justification and never referenced PAC-24. In addition, other Senators took the position that, even in its present state, PAC-24 no more supports these promotions than does PAC-27.

Another topic given some discussion was the processes laid out in both PAC-27 and PAC-2 for tenure and promotion review. Particularly of interest was the provision that these department-level reviews require the participation of a minimum of five tenured faculty members. It was noted that, in the second occurrence described above, final approval was given by only three such faculty members. However, there is no specific provision in PAC-2 (analogous to section 12 of PAC-27) dealing with the awarding of full professor status in academic administrator appointments.

Ultimately, debate was closed and the Senate proceeded with a vote on the resolution, carried out by secret ballot. The final tally was 15 in favor and 15 opposed; this tally included the vote of Chair Adams. A careful consideration of Robert’s Rules of Order by the Parliamentarian, Senator Ron Morrison, revealed that the chair is entitled to vote when the “secret ballot” mechanism is used and that in the event of a tie, the motion is rejected.

PAC-26 ISN’T SO BAD

The reconciled PAC-26 was also given its first reading, which was a much less laborious process. This document is also quite lengthy, and has therefore also been provided as a separate attachment. Chair Adams began this discussion by hailing PAC-26 as an example of genuine compromise (i.e., shared governance) between Faculty Senate and the administration. To be clear, the reconciled document is based on neither the version passed by Senate last term nor the version proposed separately by the administration. This document simply returns to the current, in-force version of PAC-26, and removes the language on faculty termination for cause. That language, of course, will now reside in PAC-22.

Otherwise, there have been just a few minor changes to the document. To summarize, the language specifying termination sequence has been moved to the top of the document, making it clear that the same sequence applies in either a case of

financial exigency or a case of discontinued program, and a few adjustments were made to correct the number of colleges and the title of the Provost.

There was no discussion of the reconciled PAC-26, which will proceed to a second reading at the next Senate meeting.

ODDS & ENDS

Announcements from the Chair: The College of Business and Technology was holding a meeting, concurrent with the 29 October Senate meeting, to discuss the ongoing revision process for PAC-27. This meeting was apparently called at the behest of the Provost, and was specifically concerned with the proposed removal of the College Tenure Committee from the review process.

An issue has arisen with the granting of release time for Chair-elect Dobranski in the spring semester. While it has been the historical practice to grant such release time, the Provost was unable to find any official record of it. There also seemed to be some confusion about whether this release time should be granted by the Provost or the appropriate college Dean.

It has been determined that the university will stick with Anthem as its insurance provider for 2016, although the possibility of significant change exists beyond 2016. In addition, the university is currently anticipating an approximately 9% rate increase from Anthem, and this number has been negotiated down to.

Senate subcommittee reports: Subcommittee reports were very brief this week, given the predominance of the PAC-22 reading and debate over the PAC/chair appointment resolution. In short, there have been no significant changes in subcommittee business since the last Senate meeting.

APPENDIX

Resolution regarding administrative appointments and associated PAcS debated and rejected (due to tie vote) at 29 October 2015 Senate meeting

Whereas the appointment of academic administrators discussed in part 12 of PAc-27: Tenure refers specifically to candidates who do not have tenure at MSU, and outlines a process that is implemented only if a search committee recommends that the candidate be given tenure, and

Whereas PAc-24: Compensation and Faculty Assignment of Administrators Holding Rank clearly states that “Administrators who hold academic rank may apply for promotion and/or tenure through normal promotion and tenure channels,”

Therefore be it resolved that the promotion process for internal candidates for academic administrative jobs, who hold academic rank of Assistant Professor or higher, is the standard process outlined in PAc-2. Furthermore be it resolved that the administration should accurately and consistently apply standard policy (defined in PAcS) in all situations governed by those policies (PAcS).
