Amendment to the Tulane Senate Constitution

Committee on Equal Opportunity and Anti-Discrimination Grievances Against Faculty

Executive:

1. To consider grievances against faculty who are full time, tenured or tenure-track, or hold appointments longer than one year alleging violations of Tulane University’s Equal Opportunity/Anti-Discrimination policies, make findings and recommend remedial actions and/or sanctions to the Senior Vice President for Academic Affairs and Provost.

2. To provide a yearly report to the Senate identifying the number of grievances received, the number that led to hearings and the time to resolution in each case.

Membership:

Two full-time tenured faculty members from each of the larger schools (Law, Liberal Arts, Business, Science and Engineering, and Public Health) two senior faculty members from the School of Medicine, one senior full-time faculty member from the Schools of Architecture, Social Work, and Professional Advancement) of the University. Faculty members shall elect members in competitive elections for non-renewable three-year staggered terms. Faculty who hold administrative appointments with dean or provost in the title are not eligible to serve. The committee shall elect its own chair.
Rationale for proposed amendment to the Senate By-Laws.
4/3/2019

The proposed amendment to the by-laws creates a university-wide senate committee to consider grievances against faculty who are full-time, tenured, tenure track or faculty holding an appointment longer than one year (and part-time tenured faculty) alleging violations of Tulane University’s Equal Opportunity/Anti-Discrimination policies. This committee will take over this function, currently exercised by school-level grievance committees. As is currently the case, The Office of Institutional Equity (OIE) will be responsible for processing grievances, conducting detailed investigations and collaborating with the Committee in its investigation and hearing process.

Having a university-wide committee will ensure that Tulane uses one consistently applied process for all cases against faculty independent from the practices of any one school, thus leading to greater consistency, fairness, transparency and timeliness in the handling of grievances. It will also transfer the burden of sanctioning to the Senior Vice President for Academic Affairs and Provost, who will consult with the appropriate deans and General Counsel, but who will have the ultimate authority to apply sanctions. We also submit for senate approval guidelines for the work of this committee that outline procedural steps, clarify the process for all parties and establish clear deadlines. These guidelines will be incorporated into the new Faculty Handbook.
POLICY ON FACULTY GRIEVANCE PROCESS

Committee on Equal Opportunity and Anti-Discrimination Grievances Against Faculty

I. Training

All members of the Committee on Equal Opportunity and Anti-Discrimination Grievances Against Faculty (the Committee) should receive training by the Office of Institutional Equity (OIE) and others, as necessary, on issues connected with potential violations of Tulane’s Equal Opportunity/Anti-discrimination Policies (EO Policies).

II. Jurisdiction

The Committee shall hear grievances of EO Policy violations brought by any member of the University community against faculty who are full time, tenured or tenure-track (or part-time tenured) or hold appointments longer than one year that cannot be resolved informally by OIE. The Chair of the Committee shall have discretion to decide whether a party to a complaint has standing to proceed before the Committee against a faculty member. The Committee’s jurisdiction replaces that of the grievance committees of the individual schools, Newcomb Tulane College, and/or Centers/Institutes.

III. Ad Hoc Appointments

The Committee can appoint members on an ad hoc basis, as necessary, from among the pool of members with prior service to the Committee (or School grievance committees), if necessary to secure an eligible panel.

IV. Investigative Process

1. Initial Review by OIE. When a grievance comes to the attention of OIE, OIE will conduct a review to determine whether the matter sufficiently states a grievance under the University’s Equal Opportunity/Anti-Discrimination Policies (the EO Policies) that it should proceed to the investigative process. OIE should provide written notice of its initial determination to the appropriate parties within thirty days. If OIE cannot make the thirty-day deadline, it shall communicate the reasons to the parties in writing. If OIE determine there is not basis for an investigation, the complainant may appeal that decision to the chair of the committee.
2. **OIE’s Investigation.** When OIE has determined that the matter should proceed to the investigative process, OIE will conduct an investigation of the complaint. OIE shall issue a written notice of investigation to the parties stating the charge(s). OIE shall also provide all parties with a written statement regarding their rights and an explanation of the investigation process. The investigation is meant to provide a fair and reliable gathering of the facts (including interviewing witnesses and gathering relevant and available evidence). OIE should provide the complainant and respondent with a fair and equal opportunity to be heard, to submit information, and to identify witnesses who have relevant information. OIE’s investigator may speak with individuals who are willing to participate and have relevant information. The parties may bring an advisor to any meetings. The advisor may be drawn from the Tulane faculty, may be an attorney unaffiliated with Tulane, or someone else of his/her choosing. At meetings, the advisor may not speak for the complainant or respondent.

3. **Investigator Discretion – Evidence.** The investigator, OIE, has the discretion to determine the relevance of any witness or other evidence to the finding of responsibility, and may exclude information in preparing the investigation report if the information is irrelevant, immaterial, or more prejudicial than informative.

4. **Timing of Investigation.** Best efforts should be made to complete the process in a timely manner by balancing principles of thoroughness and fundamental fairness with promptness. In general, OIE will seek to conclude the investigation within thirty (30) business days from the issuance of the notice of investigation, although special circumstances may extend this time frame. The time frame for completion of the investigation, or any designated time frames of steps in the investigation, may be extended for good cause as necessary to ensure the integrity and completeness of the investigation, to comply with a request by external law enforcement, to accommodate the availability of witnesses, to account for Tulane University breaks or vacations, to account for complexities of a case (including the number of witnesses and volume of information provided by the parties), or to address other legitimate reasons as defined by the investigator. Any extension of the timeframes, and the reason for the extension, should be shared with the parties in writing.

5. **OIE’s Preliminary Report.** OIE should provide a preliminary written report to the parties. The report should summarize the information gathered, synthesize areas of agreement and disagreement among the parties and/or witnesses with any supporting information, and contain the investigator’s findings of fact and
recommended conclusions regarding whether a violation of the University’s EO Policies occurred. The complainant and respondent shall have an opportunity to review the draft report and, within ten (10) business days, submit written objections to OIE.

6. **OIE’s Final Report.** Within a reasonable time following receipt of any additional information from the parties and/or individuals involved in the process, or after the ten (10) business day comment period has lapsed without comment, the investigator will make a final investigative determination, by a preponderance of the evidence standard, regarding whether a violation of the EO Policies occurred. The final report shall be made available to the complainant and respondent.

7. **Panel Review.** Within five (5) business days of completion, OIE shall submit its final report and make available all evidence collected to the Chair of the Committee. The Chair of the Committee shall then, within a reasonable time, assemble a review panel. No one shall participate on a panel if they have a conflict of interest as determined by the chair. A panel shall consist of five members of the Committee, four members constitute a quorum. Committee members with a conflict of interest, such as a close relationship with either the complainant or respondent, shall recuse themselves, with the final authority on resolving conflicts of interest resting with the Committee chair.

**V. Preliminary Panel Meeting**

The review panel will hold closed preliminary meeting(s) to discuss the results of the OIE investigation within ten (10) business days if practicable. It will determine whether a full hearing is warranted and will consult with OIE, and whether any aspect of the case or the findings requires further clarification and/or investigation which might entail consulting with other faculty members for guidance on practices and customs which may be unique to the field at issue. It will also determine which, if any, witnesses to interview during the panel meeting.

If the review panel determines that no hearing is warranted, it will inform all parties to the grievance in writing within 10 business days. All parties have the right to appeal this decision to the chair of the committee.

**VI. Panel Hearing**
1. **Timing.**
Within a reasonable time (typically no more than 20 business days, subject to scheduling constraints) following the preliminary closed meeting(s), the review panel shall hold a hearing with the parties (i.e., complainant(s) and respondent(s)), and any witnesses invited by the panel.

2. **Advisors.**
The parties may bring an advisor to the meeting. The advisor may be drawn from the Tulane faculty, may be an attorney unaffiliated with Tulane, or someone else of his/her choosing. At the hearing, the advisor may not speak for the complainant or respondent; only the review panel may question the parties and witnesses during the hearing. The parties to the grievance may submit in writing questions for the review panel to consider. However, the panel has the discretion to decide what questions to pose to witnesses. The Hearing Panel must retain a record of questions not asked and witnesses not invited to provide testimony.

3. **Participation.**
If any party chooses to not be physically present at the panel meeting or chooses to be separate, they may participate via telephone and/or video conference, or other manner deemed acceptable to the panel.

4. **Record-Keeping.**
The panel shall make and retain for the record an audio recording of the proceedings available to the parties on request.

5. **Opening Statements.**
During the hearing, each party to the grievance may make an opening statement for a reasonable time (generally, no more than ten (10) minutes).

**VI. Decision and Sanctions**

1. **Deliberations and Outcomes.**
Following the hearing, the review panel will deliberate confidentially. The panel will decide whether the respondent is responsible, and, if so, it will recommend sanctions. A decision of the panel requires three affirmative votes. No abstentions are allowed. Within ten (10) business days, the panel will send a copy of its written findings on the grievance and its rationale, as well as the recommended
sanctions in the case of a finding of responsibility, to the Senior Vice President for Academic Affairs and Provost (with a copy to the relevant Dean(s)).

2. **Recommendation of Sanctions.**
   In the event that the finding is of responsibility on the part of the faculty member, the panel shall recommend sanctions. Depending on the gravity of the case, these may involve sanctions that can be implemented within the faculty member’s department or schools. In cases of gross misconduct, the hearing panel may recommend the loss of tenure and termination from the university.

3. **Written Notice of Intent:** Within ten (10) business days following receipt of the hearing panel’s findings, conclusions, and statement of reasons, the Provost shall either accept, reject or modify the hearing panel’s report, notify the panel, the Dean, the responding faculty member, and the complainant in writing of his or her findings regarding the alleged EO Policy violation, the underlying rationale, the intended sanctions and their proposed effective date. All parties have the right to appeal the decisions to FTFR.

4. **Response to Written Notice of Intent**
   The faculty member who receives a written notice of intent shall be entitled to respond, in writing within ten (10) business days of the date of issuance of the Notice of Intent. (Reasonable accommodation shall be made if the person complained against is away on leave or no longer employed at Tulane University.) The response, if any shall be reviewed by the panel of the Senate Committee on EO Policy Violations that originally held the hearing. That panel shall prepare its own response/recommendations and forward to the Senior Vice President for Academic Affairs and Provost within ten (10) business days of receipt. All parties have the right to appeal the decisions to FTFR.

5. **Written Notice of Action**
   If the University justifies disciplinary actions following the review of all timely responses, if any, from the faculty member and the Senate Committee of Equal Opportunity Grievances, and within 30 (thirty) business days of the date of the issuance of the written notice of intent, the University shall issue a written notice of action to the faculty member of the disciplinary action to be taken and its effective date. The notice of action may not include an action more severe than those described in the Notice of Intent. Written notices of action involving dismissal shall be forwarded to FTFR as well as to the parties involved in the case.
Based on this notice of action, the faculty member has the right to appeal disciplinary actions short of dismissal to FTFR, see Faculty Handbook, Chapter 8.3.5. In the case of a notice of dismissal, the case is referred to FTFR as described in the Faculty Handbook Chapter 8.5.3.

VII. Appeals
Based on this notice of action, the faculty member has the right to appeal disciplinary actions short of dismissal to FTFR, see Faculty Handbook, Chapter 8.3.5. In the case of a notice of dismissal, the case is referred to FTFR as described in the Faculty Handbook Chapter 8.5.3.

VIII. Notification
After all appeals are exhausted (per Chapter 8 in the Faculty Handbook). The Provost shall notify the parties and department members (if the school has departments) of the final sanctions imposed. For school or centers without departments, the Provost shall notify the faculty.