Amendment to the Tulane Senate Bylaws:

Committee on Equal Opportunity and Anti-Discrimination Grievances Against Faculty

Executive:
1. To consider grievances alleging faculty 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. This process does not apply to faculty on appointments of less than a year or in the first year of appointment. Those grievances are handled directly by the Office of Institutional Equity (OIE) and Human Resources.

Advisory:
1. 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 each of 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 a chair.

May 1, 2019
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 alleging faculty 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. This process does not apply to faculty on appointments of less than a year or in the first year of appointment. Those grievances are handled directly by the Office of Institutional Equity (OIE) and Human Resources. This committee will take over the 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.
Policies for the 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 alleging faculty violations of Tulane University’s Equal Opportunity and Anti-Discrimination policies that cannot be resolved informally by OIE. The committee does not have jurisdiction over grievances against faculty on appointments of less than a year or on the first year of appointment. Those grievances are handled directly by OIE and Human Resources.

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 a 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) to proceed to the investigative process. OIE should provide written notice of its initial determination to the appropriate parties within thirty (30) working days. If OIE cannot make the thirty-day deadline, it shall communicate the reasons to the parties in writing. If OIE determines there is not a sufficient 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. Each party may bring an advisor to any meetings. The advisor may be a Tulane employee or an attorney. At meetings, the advisor may not speak for either the complainant or the 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) working 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) working 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) working 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) working days of completion, OIE shall submit its final report and make available to the Chair of the Committee all evidence collected. The Chair of the Committee shall then, within a reasonable time, assemble a review panel. A panel shall consist of five members of the Committee. Four members constitute a quorum. No one shall participate on a panel if they have a conflict of interest as determined by the chair. Committee members with a conflict of interest, such as a close relationship with either the complainant or respondent, shall be recused 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) working 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 and that the case will be dismissed, it will inform all parties to the grievance in writing within ten (10) working 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 twenty (20) working 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 a Tulane University employee or an attorney unaffiliated with Tulane. 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).

VII. Decision and Sanctions

1. Deliberations and Outcomes.
Following the hearing, the review panel will deliberate confidentially. The panel will decide by a preponderance of the evidence standard whether the respondent is responsible, and, if so, it will recommend sanctions. A decision of the panel to find the respondent responsible requires three affirmative votes. No abstentions are allowed. Within ten (10) business days, the panel will send a written copy of
its 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 school or harsher sanctions that may include the loss of tenure and/or 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 intent regarding the alleged EO Policy violation, the underlying rationale, the intended sanctions and their proposed effective date.

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) working days of the date of issuance of the Notice of Intent. 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) working days of receipt.

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) working 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 for a dismissal hearing as well as to the parties involved in the case.
VIII. Appeals

The respondent and/or the complainant(s) have the right to appeal disciplinary findings and 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 for a dismissal hearing as described in the Faculty Handbook Chapter 8.5.

IX. 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 schools or centers without departments, the Provost shall notify the faculty.