March 17, 2015

E. Carol Polifroni, Chair
Senate Executive Committee

Re: Request to review process and procedures related to the Committee of Three

Dear Carol,

At the request of the Senate Executive Committee (SEC), a committee was formed with representation from the SEC, Committee of Three, Provost’s Office, Office of the General Counsel and the AAUP (“Review Committee”). By letter dated December 8, 2014, the Review Committee was charged with the following:

1. Review the Committee of Three’s processes and procedures;
2. Design a decision tree reflecting whether jurisdiction of a matter resides with AAUP or Committee;
3. Address whether a case can move through the Committee and AAUP concurrently;
4. Need for and appropriateness of communications with AAUP;
5. Recommendations for revisions to the By-Laws of the University of Connecticut (“By-Laws”) as they relate to the Committee of Three.

The Review Committee met to review and consider these issues, as well as others that arose during the Review Committee’s discussion and/or review of the By-Laws.

Pursuant to the By-Laws, the Committee of Three is empowered to function in connection with faculty dismissal and faculty grievance procedures.¹

Faculty Dismissals

Faculty dismissals are governed by Article XIV, Section H of the By-Laws and by Article 27² of the Collective Bargaining Agreement between the University of Connecticut Board of Trustees and the UConn Chapter of the AAUP (“AAUP agreement”). A dismissal should proceed under

¹ Article IX, Section G.2.
² Article 27 deals with tenured and tenure track faculty. Article 13 deals with non-tenure track faculty.
the By-Laws process or the Article 27 process, not both. Article 27 provides in relevant part that:

For tenured or tenure-track faculty dismissal or discipline which is the result of incompetence, or failure to meet satisfactory standards of job performance, or failure to meet continuing educational requirements, or to fulfill professional commitments shall not fall within the purview of this Article, but shall be dealt with exclusively under the University By-Laws. (Underline added.)

Therefore, any dismissal or discipline based on the above conduct must be dealt with under the By-Laws and cannot be addressed under Article 27.

Article 27 further provides that dismissals based on conduct such as neglect of assigned responsibilities, insubordination, serious misconduct, non-compliance with the By-Laws or research regulations and conduct which impairs the rights of students or other staff members are appropriately dealt with pursuant to the contract.

Section H of the By-Laws provides in relevant part that:

Adequate cause for dismissal will be related directly and substantially to the fitness of the faculty member in his/her professional capacity as described in Section D.³

Under some circumstances, there may be the potential for disagreement over which process is appropriate, given ambiguous language in the relevant By-Laws provisions, particularly Section D, as well as in Article 27. For example, certain types of conduct may constitute "failure to fulfill professional commitments", and at the same time be considered "neglect of assigned responsibilities." Generally, however, the University, in consultation with its Office of Faculty and Staff Labor Relations (OFSLR), will determine the appropriate dismissal process. The OFSLR, depending on the situation, may consult with the AAUP in making this determination.

**Faculty Grievances**

Faculty grievances are governed by Article XIV, Section S of the By-Laws as supplemented by Article 11 of the AAUP agreement, and Article 10 of the AAUP agreement.⁴ Pursuant to Article 11, prior to the first step of the By-Laws grievance procedure, the faculty member who alleges s/he was aggrieved must participate in an informal conference with the appropriate administrator.

Grievances brought pursuant to Article 10 are limited to disputes related to an interpretation or application of the AAUP agreement. All other grievances should be brought pursuant to the By-

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³ Section D speaks to qualities and qualifications desired of faculty.
⁴ See Appendix A for the full text of Article 11.
Laws.\(^5\)

A grievance should proceed under the By-Laws process or the Article 10 process, not both. As per Article 10.3 of the AAUP agreement, if a faculty member seeks to resolve a matter in any other forum, whether administrative or judicial, the UConn Board of Trustees does not have any obligation to entertain or proceed with the contractual grievance process.

**Conclusions and Recommendations**

Based on the foregoing, and in response to the specific questions presented by the SEC:

Matters of dismissal and grievances should proceed pursuant to the By-Laws process or the AAUP process. Faculty should not be permitted to circumvent the process selected by the University. The AAUP retains the right to challenge the process selected by the University.

We recommend communication between the University and AAUP on these issues to avoid the potential for concurrent proceedings.

Further, before proceeding with a matter, the Committee of Three should ascertain what, if any, procedural steps have taken place prior to considering the faculty member’s application to the Committee of Three.

In addition, we recommend a clearer definition of the type of conduct reserved for discipline/dismissal under the By-Laws. This may be accomplished by some or all of the following:

- Revisions to the By-Laws (Sections D and H of Article XIV)
- The development of an internal document that defines/describes what is meant by the terms used in the University By-Laws, perhaps including a list of non-exhaustive examples

We also recommend defining the parameters of the language in section Article XIV, H.3.c of the By-Laws.\(^6\)

- What is meant by "professional organizations"
- Hard limit on, or ability to limit, number of representatives who can attend as observers.

\(^5\) Matters that fall within the purview of Article XIV, Section F (Resignation), H (Dismissals) and I (Suspensions) should be dealt with under those sections of the Bylaws and not pursuant to the Section S grievance procedure.

\(^6\) This issue was not in the SEC "charge" letter but was raised by the Committee of Three and therefore addressed herein.
Our understanding is that the OFSLR interprets "professional organizations" to mean the AAUP. Nevertheless, the term "professional organizations" can be construed much more broadly and, therefore, the term should be clarified through a revision to the By-Laws at the appropriate time.

As requested, a flowchart depicting the process by which a faculty dismissal or grievance should proceed is attached hereto.

Sincerely,

Susan Spiggle, Senate Executive Committee
Chair of Review Committee

Sally Reis, Office of the Provost
Veronica Makowsky, Committee of Three
Nicole Fournier Gelston, Office of the General Counsel
Michael Bailey, AAUP
Appendix A

ADDITIONS TO THE BY-LAWS GRIEVANCE PROCEDURES

11.1 Except for disciplinary grievances (which are grievable under Article 27), for grievances arising out of the application or interpretation of the University of Connecticut Laws and By-Laws, (revised June 20, 2006), and policies of the University, the grievance procedures set forth in said document shall be followed. Prior to the first step of the grievance procedure, an informal conference shall be held between the faculty member who alleges he/she is aggrieved and the appropriate administrator to discuss the alleged grievance. The faculty member, if he/she desires, may be accompanied by a representative of the AAUP. Grievances shall be filed within thirty-seven (37) days of the occurrence of the event or when the member knew or reasonably should have known of the event giving rise to the grievance.

11.2 Within seven (7) calendar days of the meeting, the administrator shall provide in writing his/her answer to the faculty member. A copy of this answer shall be given to the AAUP.

11.3 If the faculty member still feels aggrieved, he/she shall file within fifteen (15) calendar days of receipt of such answer a written grievance in conformity with the grievance procedure in the University of Connecticut Laws and By-Laws, (revised June 20, 2006). Settlements made under such grievance procedure dealing with terms and conditions of employment shall be consistent with the provisions of this Agreement and shall be reported to the AAUP.
Faculty believes cause for grievance which cannot be resolved by ordinary means, may request Committee of three appoint hearing committee.

1. PTR complaints only at end of sequence of peer review, including FRB.

2. Other complaints only after appropriate administrative remedies exhausted.

3. Committee of Three Mediate complaint?
   - Yes → End of process
   - No → 4. Appoint ad hoc hearing committee of 3-5 faculty

   Report to Provost or President

   Response in 30 days

   To BOT through Provost or President (30 days) → BOT Reviews

Determine: next slide
Determine:

6. The hearing committee appointed by the Committee of Three shall be instructed by the Committee of Three to determine:

a. Whether the relevant procedures established by the University have been followed in the case before them.
b. Whether in substance the grievant has just cause for complaint.

c. In cases involving promotion, tenure, and reappointment:
   i. the sufficiency and relevance of the evidence employed in making the decision.
   ii. whether the decision arrived at was in reasonable conformity with the evidence considered.

d. Appropriate remedy, if any.
Article 27 Discipline

1. neglect of assigned responsibilities;

2. insubordination, serious misconduct, or non-compliance with University of Connecticut Laws and By-Laws (Revised June 20, 2006); noncompliance with the Code of Ethics for Public Officials (Chapter 10 of the Connecticut General Statutes) or with University, State, or Federal regulations governing research;

3. the use of fraud, collusion, concealment, or misrepresentation of a fact material to obtaining employment with the University and/or obtaining promotion, tenure, salary increase, or other benefit;

4. sexual harassment, serious misconduct, or other conduct which impairs the rights of students or other staff members
A. Discipline shall be for just cause such as: Slide previous page

...dismissal or discipline which is the result of incompetence, or failure to meet satisfactory standards of job performance, or failure to meet continuing educational requirements, or to fulfill professional commitments shall not fall within the purview of this Article, but shall be dealt with exclusively under the University By-Laws.

D. For cases involving discipline or dismissal for misconduct, the procedures outlined above supersede Section XV, E, F, G, H, and S of the University of Connecticut Laws and By-Laws (Revised June 20, 2006).

ByLaw Dismissal Procedures (XIV H.)

1a. Adequate cause for dismissal related directly and substantially to fitness of faculty member in his/her professional capacity (Sec D.2d)

2a. If circumstances arise that, on their face, cause the Provost to anticipate the reasonable possibility of dismissal being recommended for a faculty member... the Provost (or representative) will initiate discussion of the matter with faculty member looking towards a mutually acceptable settlement.

Settlement reached

Yes

End of process

No

2.b. Question referred to Committee of Three within 14 days

Committee of three proceed to informal inquiry, including conciliation. Report recommendations to Provost within 14 days

Provost decides if continued action warranted (14 days)

Yes

May request committee of five (7 days)

No

End of process

30 days

AAUP Discipline (Art 27)

A. Discipline shall be for just cause such as: Slide previous page

D.2.d Fitness

Slide next page
D.2.d Fitness

i. Personal attributes; integrity, industry, open-mindedness, objectivity, friendliness, effectiveness in speaking, capacity for leadership and cooperation, breadth of intellectual interests.

ii. Concern for the educational, social, and personal welfare of students, such as is demonstrated, for example, by success in mentoring.

iii. Willingness and ability to assist in the various types of service which a state University renders, in the answering of inquiries, the giving of advice, the conduct of surveys, and the like.

iv. Competence in fulfilling responsibilities toward democratic University government, as in department and faculty meetings, committee work, and administrative duties.

v. A sympathetic but discriminating interest in the development of the University, and the assumption of a share of responsibility for the efficient execution of its functions; or in the case of recent appointees, indication that this interest will develop in due time.