



# AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS:

## UNIVERSITY OF MICHIGAN-FLINT CHAPTER

### September 2018 NEWSLETTER FROM THE UM-FLINT CHAPTER



#### Table of Contents

- ❖ Welcome new UM-Flint Faculty!
- ❖ *Academe* Highlight: July/August 2018 Bulletin
- ❖ Faculty Concerns: Update to the June 2018 feature ‘Shared Services and Departmental Spaces’
- ❖ Governance at UM-Flint:
  - Due Process: The Right of Faculty to Fair Treatment and the Privilege of the Faculty to Evaluate their Peers
  - Case Studies: Are we Cultivating, Respecting, and Understanding Due Process at UM-Flint
- ❖ Governance Policy Highlight: Your Personnel File and Your Rights



#### Welcome new UM-Flint Faculty!

The AAUP as a national association ([www.aaup.org](http://www.aaup.org)) offers support to faculty across the country on a wide variety of matters, from webinars on issues in higher education to consultation support for grievances. The AAUP also publishes professional guidelines on governance and academic freedom that have become the model for governance at the University of Michigan. Not only does U of M recommend the AAUP as a resource for its faculty, much of the Regents Bylaws and University of Michigan Faculty Handbook is in fact material derived from national AAUP’s governance policies. The AAUP national also offers professional liability insurance. Across the country AAUP chapters work with faculty to advocate for best practices in higher education, particularly as they relate to governance, academic freedom, and the concerns of faculty and their students. At the chapter level, the AAUP at UM-

Flint hosts meetings to hear from faculty and students, and organizes workshops on matters relevant to governance and academic freedom, among other activities.



#### *Academe* Highlight: July/August 2018 Bulletin

For its July-August issue *Academe* published the annual *Bulletin of the American Association of University Professors*.<sup>1</sup> As stated on the AAUP website, the *Bulletin* “collects in one place the reports, policy statements, and official AAUP business materials of an academic year—in this case, 2017–18,” such as the May 2018 AAUP academic freedom and tenure investigative report on the University of Nebraska-Lincoln.<sup>2</sup> This year’s section on policy documents and committee reports includes a revised (2018) “*Recommended Institutional Regulations on Academic Freedom and Tenure*”<sup>3</sup> the December 2017 report “*National Security, the Assault on Science, and Academic Freedom*,”<sup>4</sup> and the April 2018 report on “*Campus Free-Speech Legislation: History, Progress, and Problems*.”<sup>5</sup>

The first “*Recommended Institutional Regulations on Academic Freedom and Tenure*” policy document was developed in 1957, and since then has been revised eleven times.<sup>6</sup> These revisions are based on AAUP’s “*continuing experience in evaluating regulations actually in force at particular institutions*” and “*further definition of the [Association’s] standards and procedures*” (13). The recommended regulations not only strive to protect academic freedom and tenure at an institution, but also to ensure that it observes academic due process. The exercise of these recommended regulations helps in upholding an institution’s primary role as a “*marketplace of ideas*” (13). The first section of the “*Recommended Institutional Regulations on Academic Freedom and Tenure*” policy document addresses faculty appointments (terms and conditions, probationary appointments subject to renewal,

1 Available online at: <https://www.aaup.org/issue/july-august-2018-bulletin>.

2 Available online at: [https://www.aaup.org/sites/default/files/JA18\\_UNL.pdf](https://www.aaup.org/sites/default/files/JA18_UNL.pdf).

3 Available online at: [https://www.aaup.org/sites/default/files/JA18\\_RIR.pdf](https://www.aaup.org/sites/default/files/JA18_RIR.pdf).

4 Available online at: [https://www.aaup.org/sites/default/files/JA18\\_NationalSecurity.pdf](https://www.aaup.org/sites/default/files/JA18_NationalSecurity.pdf).

5 Available online at: [https://www.aaup.org/sites/default/files/JA18\\_CampusFreeSpeech.pdf](https://www.aaup.org/sites/default/files/JA18_CampusFreeSpeech.pdf).

6 An expanded and revised text was completed in 1967, and revisions made in 1972, 1976, 1982, 1990, 1999, 2005, 2006, 2009, 2013, 2018.

termination by faculty members or by the institution), including procedures for dismissal or imposition of sanctions. For example, when it comes to appointments in general, it is recommended that *“the terms and conditions of every appointment to the faculty will be stated or confirmed in writing”* (1a), and that faculty without tenure *“will be informed each year in writing of the renewal of the appointment and of all matters relative to eligibility for the acquisition of tenure”* (1c). For probationary appointments, faculty *“will be advised, at the time of initial appointment, of the substantive standards and procedures generally employed in decisions affecting renewal and tenure”* (2b), and when there is a non-renewal decision they will receive *“written notice . . . in advance of the expiration of the appointment”* (2c) and *“will be advised upon request of the reasons which contributed to that decision”* (2e); *“if the faculty member so requests,”* said reasons *“will be confirmed in writing”* (2f).<sup>7</sup>

Other provisions in the recommended regulations cover procedures for imposition of sanctions other than dismissal, terminal salary or notice, the guarantee of academic freedom and protection against discrimination, complaint procedures when a non-reappointment decision is based on violation of academic freedom or discrimination (10), administrative personnel who hold academic rank (11), political activities of faculty members (12), part-time faculty appointments (13), graduate student employees (14), and other academic staff (15). Lastly, section 16 of the recommended regulations addresses procedures when a faculty member *“alleges cause for grievance in any matter”* and petitions for redress.



## **Faculty Concerns: Update to the June 2018 feature ‘Shared Services and Departmental Spaces’**

In the June 2018 Newsletter, it was reported that the CAS Dean’s office shared with select parties around May of 2018 that department signs were going to be removed as part of the staff restructuring process over the summer. This has in fact begun occurring. The action compromises freedom of expression and occurred when opportunity for reasonable efforts to address the issue in faculty governance

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<sup>7</sup> If a faculty member alleges that the non-renewal decision was based on inadequate consideration, a review committee will determine if inadequate consideration occurred, providing “copies of its findings to the faculty member, the body or individual that made the decision, and the president or other appropriate administrative officer” (2g).

meetings was not possible (over the summer when faculty were off contract). With their students, faculty are their departments and the erasure of faculty, student, and program identity is a harsh message (as expressed in Council of Chairs last year, according to the CAS Dean, faculty are merely tenants of spaces). The lack of consultation on such an action is consistent with the CAS Dean’s decision to proceed with the staffing restructuring despite a roughly 2/3 faculty vote against the shared services initiative.

As reported in June, departmental names are bestowed by the U of M Board of Regents. Therefore faculty have a right to use those names, even if in physical signage. According to the Regents Bylaws, it is the governing faculty of a unit to whom the Regents have assigned purview over the organization of divisions and departments in that unit, as well as oversight over academic programs and curriculum. By contrast, faculty do not have exclusive oversight over school/college structures, which require executive officer support to create or modify, but faculty also often decide collectively to alter school/college names and structures through recommendations to the governing faculty, their deans, the provost, and the chancellor.

In the case of CAS’s missing department signs, the seeming lack of consideration for faculty purview and Regental authority in the college’s business should be of concern to both its students and faculty. Only departments are best equipped to know how to present themselves to their students, and students themselves derive identity and a sense of community from their respective departments. Faculty in instructional units should be able to refer to themselves according to their Regentally bestowed titles, and to determine how best to identify themselves to students whether in physical or other communication.

The faculty who are concerned about staffing changes and related decanal actions could seek assistance from Faculty Council.



## **Governance at UM-Flint: Due Process: The Right of the Faculty to Fair Treatment and the Privilege of the Faculty to Evaluate their Peers**

A) **Introduction:** Due process is one of the most fundamental concepts in academia and is equally central to an individual’s success. The principles of due process

ensure that a variety of decisions occur through reasoned decision-making that is transparent, equitable, and objective. Not having due process can affect both full and part-time faculty in negative ways, while at the same time it can cripple the institution with increasing costs. This article explores definitions of due process and faculty responsibilities at the university, if not in an exhaustive manner, providing a sample of information about resources available to faculty on this issue.

**B) Definitions:** Due process might refer to either legal due process, which has its own criteria, or it may refer to academic due process. Although there are instances when they intersect, most faculty will deal with academic due process, which is the focus here as well.

*Generally due process refers to: the right to present exculpatory evidence before an impartial hearing committee and to confront accusers whose evidence has been presented in what is often a one-sided fact-finding and decision making process—should be afforded in these cases.<sup>8</sup>*

According to the Senate Advisory Committee for University Affairs (SACUA), which is the leading faculty governance committee for all three campuses in institutional governance at U of M:

*Faculty in public universities have a right to due process under the Fourteenth Amendment in actions that would encroach on the faculty member's property or liberty interests. Property interests are most clearly implicated in cases of termination of a tenured faculty member. But due process is also required where University actions stand to injure a faculty member's "good name, reputations, honor, and integrity." In addition, faculty frequently have rights to fair treatment in contract law.// Regardless of the legal and constitutional requirements, it is in the interest, and has been the policy, of the University of Michigan to treat faculty fairly. Recognition of this interest and the importance of due process appear in numerous University policy statements.<sup>9</sup>*

The Report continues:

*Regardless of the minimal legal requirements of due*

*process, however, the University's interest in and commitment to fair treatment of faculty demands adherence to high standards of due process. Principles and elements of due process on which there is broad agreement include:<sup>10</sup> [...] A fair and competent investigation process, including access to the evidence necessary to support or defend oneself against charges and the opportunity to respond to and challenge opposing facts and arguments; In addition to basic due process requirements, employees are entitled to inspect and make copies of their personnel files as a matter of both University policy and Michigan law.<sup>11</sup>*

Due process (according to the SACUA Report) includes standards for how decisions are made. They must be derived from:

- ▶ A fair hearing by knowledgeable and impartial arbiters.
- ▶ A decision based on facts accompanied by a written explanation that identifies the factual basis for the decision.
- ▶ Independent, meaningful, and timely appeal.<sup>12</sup>

**Academic due process:** According to AAUP publications,

*[A]cademic due process is "a system of procedures designed to produce the best possible judgments in those personnel problems of higher education which may yield a serious adverse decision about a teacher."<sup>13</sup> [...] AAUP*

<sup>10</sup> The following standards of due process are cited in the Report, f.n. 5. One authoritative and often-cited source, referenced in the FHC Report, lists the following elements:

1. An unbiased tribunal.
2. Notice of the proposed action and the grounds asserted for it.
3. Opportunity to present reasons why the proposed action should not be taken.
4. The right to present evidence, including the right to call witnesses.
5. The right to know opposing evidence.
6. The right to cross-examine adverse witnesses.
7. A decision based exclusively on the evidence presented.
8. Opportunity to be represented by counsel.
9. Requirement that the tribunal prepare a record of the evidence presented.
10. Requirement that the tribunal prepare written findings of fact and reasons for its decision.

H.J. Friendly, "Some Kind of Hearing", 123 U. Pa. L. Rev. 1267 (1975). (As of 2011, this article ranked 48th in a listing of all-time most cited law review articles (Fred R. Shapiro and Michelle Pearce, *The Most-Cited Law Review Articles of All Time*, 110 Mich. L. Rev. 1483 (2012)).)

<sup>11</sup> SACUA, *Report on Office of Institutional Equity*, 4.

<sup>12</sup> SACUA, *Report on Office of Institutional Equity*, 5.

<sup>13</sup> Joughin, "Academic Due Process," *Academic Freedom: The Scholar's Place in Modern Society* 146 (Oceanna Publications 1964); see also Statement on Government of Colleges and Universities,

<sup>8</sup> Chair of SACUA, 'Monthly Report to the Board of Regents: Bylaw 5.09,' *The University Record Online* (Mar. 9, 2009), [http://www.ur.umich.edu/0809/Mar02\\_09/20.php](http://www.ur.umich.edu/0809/Mar02_09/20.php).

<sup>9</sup> SACUA, *Report on Office of Institutional Equity Procedures and Conduct* (March 9, 2015), 3.

*policy encompasses the following components of academic due process: a statement of charges in reasonable particularity; opportunity for a hearing before a faculty hearing body; the right of counsel if desired; the right to present evidence and to cross-examine; record of the hearing; and opportunity to the governing board.*<sup>14</sup>

### C) Due process in faculty status decisions:

By far the area in which due process is most commonly lacking is in disciplinary actions and decisions of faculty status. According to the Board of Regents of the University of Michigan, the faculty act in matters of appointment, and it ; the governing faculty members who approve policies at the various levels and through whom faculty and their delegates make such decisions.

a) **Promotion and tenure:** In the area of promotions, due process is essential to the fair and equitable treatment of all. Criteria for equity in promotion decisions require the following conditions. Clear procedures must exist that are straightforward and approved by the faculty (of the given level of governance to which they will apply) conducting the review. If promotion policies are created without corresponding governing faculty approval, then due process is no longer being served—due process requires that those who do not stand to gain directly from an outcome of a promotion (or who are at no risk of abuse of power or authority) are responsible for the policies by which such decisions are made. Due process and peer review no longer exist when an administrator or faculty committee responsible for evaluating others can also change the standards of evaluation without the approval of those being evaluated. At U of M, the governing faculty have primary responsibility for decisions of faculty status, which means that it is the faculty's judgment at each level of review (program, department, school, college) that should be given the most weight in the decision.

Faculty responsibilities in ensuring due process in promotion matters include the following:

► Policies (any requirement in the process including standards, procedures, guidelines, etc.) being used in different levels of promotion decisions have been ratified by the governing faculty of the respective program,

department, school, college, or campus in which the policies apply.

► Those responsible for implementing policies or steps in the process are upheld to a standard of transparency (as appropriate) and accountability. It is the responsibility of the faculty to develop policies and procedures that ensure that its delegates are carrying out their duties properly.

► Those who participate in promotion decisions, including administrators, have been duly trained according to widely reputable, non-profit resources in matters of equity and unconscious bias to prevent discrimination, such as holding one candidate to a higher standard of performance than what is expected of another. According to U of M Stride, '*Education about unconscious bias should be provided to the committee.*'<sup>15</sup>

► Standards are applied without prejudice, meaning that they do not vary based on the person(s) evaluating or the person being evaluated.

► Subjective and other disallowed opinions and criteria are not allowed to influence outcomes.

Subjective decision-making is often evident when comments/claims are made against a faculty member without his/her knowledge. Signs of inappropriate subjective decision-making include the following:

➤ Claims are being made behind closed doors against a faculty member that are unsubstantiated or do not count as allowable criteria for review.

➤ Claims are made against a faculty member that he/she is not being provided an opportunity to refute or confront.

➤ A deliberative body is asked to trust confidential information, but that information and evidence of its accuracy is not disclosed to its members (thus eliminating accountability); or personnel documents unrelated to criteria for review in the areas of teaching, research, and service are presented or discussed (though they should not normally play a role in peer evaluation). Claims that a deliberative body should consider documents that exist but that are inaccessible, or on the basis of trust in an administrator's assessment of an unseen document, do not meet the standards of transparency, accountability, and peer review that are required for most decisions of faculty status.

➤ Negative or positive comments are made by someone in a position of administrative or governance authority about a person that are

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Redbook at 217, 219 ("*Joint action [with administration and faculty] should also govern dismissals . . .*").

<sup>14</sup> Donna R. Euben, 'Faculty Termination & Disciplinary Issues: Presentation to 14th Annual Legal Issues in Higher Education Conference, University of Vermont,' (October 24, 2004), <https://www.aaup.org/issues/appointments-promotions-discipline/termination-discipline-2004>.

<sup>15</sup> 'Evaluating Faculty: Faculty Annual Review Guidelines.'



subjective (opinion-based) and may affect that faculty member, including decisions about his/her status.

- Documents, complaints, or other correspondence against a faculty member are under consideration by a deliberative body, but the faculty member is not necessarily aware of the documentation and has not been invited to refute and examine it.
- Assumptions and comments are made about an individual for the purpose of judging his/her fitness for advancement, based on subjective criteria, such as a person's tone of voice, facial expressions, body language, character, etc.
- Assumptions and comments are made about an individual's desire for advancement or other professional goal without corroboration.
- Assumptions or implications are made that someone holds un-stated intentions, emotions, or opinions.

b) For **Faculty status decisions** besides promotions, such as leaves, tenure-clock stoppage, appointments to leadership and sabbaticals, the signs of inappropriate decision-making or attempts to influence the decision-making of others might include the following:

- ▶ Criteria are being applied inconsistently.
- ▶ Decisions reflect inconsistency, which in turn may reflect favoritism, cronyism, or discrimination.
- ▶ Standards for decisions are being applied that cannot be shown to have been applied to all other comparable candidates.
- ▶ Those in positions of authority create or apply new/undocumented/ or revised criteria to only certain individuals.
- ▶ Something is claimed as policy but there is no record of such a standard being ratified by the faculty or applied consistently in prior circumstances.
- ▶ Recommendations are not all put through the same procedure or venues of consideration (for example, tenure-clock decisions are only going through a chair or dean instead of to the appropriate executive committee).
- ▶ Voting thresholds are not followed or are inconsistent (some decisions are claimed to need unanimity while others pass at a different threshold).
- ▶ Faculty committees are not voting on all cases, are not recording their votes, or are allowing votes to be counted or discounted in violation of unit policies.

#### D) Due process in faculty performance reviews:

What is peer review? In academia performance reviews usually involve review by one's peers and at least standards of review set by one's peers. This is especially true of promotions, but applies as well to all other decisions of faculty status. Peer review refers not only to one's peers setting the criteria for review of performance standards, but also that one's peers have oversight over setting the methods of the review. For example, scholars oversee academic journals. A journal's oversight is provided by scholars in the relevant field. Those scholars oversee peer review not only by establishing standards to judge a submission's content, but also to instate a process of review that is driven by the scholars involved. Peer review is not just the 'what' but is also the 'how.' In the same way, one's peers must be responsible for the 'how' of the review process in academia, in order to be deemed peer review.

#### E) Post-tenure reviews:

While some units at UM-Flint conduct post-promotion reviews for merit pay, post-tenure reviews in general are viewed cautiously by AAUP, because of the propensity of these reviews to involve stifling of academic freedom, attempts to impose unjust disciplinary action, or retaliation

AAUP states that:

*[N]o procedure for evaluation of faculty should be used to weaken or undermine the principles of academic freedom and tenure. The Association cautioned particularly against allowing any general system of evaluation to be used as ground for dismissal or other disciplinary sanctions. The imposition of such sanctions is governed by other established procedures that provide the necessary safeguards of academic due process. [...] Post-tenure review must be developed and carried out by faculty.<sup>16</sup>*

Policies for performance reviews of tenured faculty require the approval of the faculty and should not inhibit their ability to apply for Professor rank. They should also never trigger reconsideration of tenured status or be used to generate negative documentation for the purpose of undermining future promotion success.

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<sup>16</sup> Donna R. Euben, AAUP Counsel, & Barbara A. Lee, 'Managing Faculty Productivity after Tenure,' (2005) <https://www.aaup.org/issues/tenure/managing-faculty-productivity-after-tenure-2005>.

**F) Faculty Compensation through Merit Pay:** The AAUP makes the following recommendations about due process in assigning merit pay. Institutions of higher education are responsible for:

- i) ensuring that salary enhancement programs have clear objectives;*
- ii) incorporating faculty peer-review committees into the process;*
- iii) developing and implementing policies by peers;*
- iv) applying criteria for such increases consistently and fairly;*
- v) ensuring appeals procedures to provide additional opportunities for decision-maker(s) to obtain relevant information; and*
- vi) ensuring that merit pay criteria are not used to squelch the speech of faculty.<sup>17</sup>*

AAUP also recommends that ‘*d There should be a sense that the outcome of the annual review process (merit raise, performance score) “feels” fair to the participants, i.e., that there is an equitable distribution of resources.*’<sup>18</sup>

#### **G) Procedures and Policies to ensure Due Process:**

A due-process standard must address both dismissal and other kinds of sanctions or changes to status. According to AAUP: ‘*Simpler procedures-though assuring due process in the particular context-are obviously required for offenses for which sanctions short of dismissal are contemplated.*’<sup>19</sup>

AAUP author Donna Euban observed [T]hat each institution develop and adopt an enumeration of sanctions short of dismissal that may be applied in cases of demonstrated irresponsibility or professional misconduct for which some penalty short of dismissal should be imposed. These sanctions and the due-process procedures for complaint, hearing, judgment, and appeal should be developed initially by joint faculty-administrative action.<sup>20</sup>

While the University of Michigan does not have a stand-alone statement on due process, extensive comments on the matter appear in faculty governance documents.

#### **H) Collegiality:**

AAUP and higher-education experts agree that it is not consistent with due process to use collegiality as a criterion for performance evaluation, primarily because it is a highly subjective and opinion-based criterion for evaluation and due to the inherent dangers of its abuse in the decision-making process. According to AAUP:

*The academic imperative is to protect free expression, not collegiality. In keeping with the general admonition that evaluation should focus on professional fitness, the statement [On Collegiality as a Criterion for Faculty Evaluation](#) maintains that whatever is pertinent with regard to collegiality should emerge through an evaluation based on the standard considerations of teaching scholarship, and service.<sup>21</sup>*

And AAUP states that: *Understood in this way, collegiality is not a distinct capacity to be assessed independently of the traditional triumvirate of teaching, scholarship, and service. Evaluation in these three areas will encompass the contributions that the virtue of collegiality may pertinently add to a faculty member’s career. The current tendency to isolate collegiality as a distinct dimension of evaluation, however, poses several dangers. Historically, “collegiality” has not infrequently been associated with ensuring homogeneity and hence with practices that exclude persons on the basis of their difference from a perceived norm. The invocation of “collegiality” may also threaten academic freedom. In the heat of important decisions regarding promotion or tenure, as well as other matters involving such traditional areas of faculty responsibility as curriculum or academic hiring, collegiality may be confused with the expectation that a faculty member display “enthusiasm” or “dedication,” evince “a constructive attitude” that will “foster harmony,” or display an excessive deference to administrative or faculty decisions where these may require reasoned discussion. Such expectations are flatly contrary to elementary principles of academic freedom, which protect a faculty member’s right to dissent from the judgments of colleagues and administrators. // A distinct criterion of collegiality also holds the potential of chilling faculty debate and discussion. // Certainly an absence of collegiality ought never, by itself, to constitute a basis for nonreappointment, denial of tenure, or dismissal [...].<sup>22</sup>*

<sup>17</sup> Euben and Lee, ‘Managing Faculty.’

<sup>18</sup> ‘Evaluating Faculty: Faculty Annual Review Guidelines,’

<sup>19</sup> Euban, ‘Faculty Termination.’

<sup>20</sup> Euban, ‘Faculty Termination.’

<sup>21</sup> Anonymous, ‘On Collegiality as a Criterion for Faculty Evaluation,’ <https://www.aaup.org/report/collegiality-criterion-faculty-evaluation>.

<sup>22</sup> Anonymous, ‘On Collegiality.’

Collegiality is in theory an admirable goal. But, it is impossible to define due to its subjectivity and is most often alleged by those who do not like or do not want to hear the opinions of others, and therefore has no place in attempts to control, influence, or evaluate university faculty. There is no way to enforce collegiality without compromising or eliminating academic freedom and limiting the right of faculty to dissent and to make necessary professional criticisms. At UM-Flint, allegations of lack of collegiality appear to have been inappropriately used in the following ways (known to current and former AAUP chapter members): to silence fellow committee members from discussing dissenting opinions; to coerce search committee members into favoring internal candidates; to stifle attempts to address abuses of power or authority; to silence junior colleagues from participating in curriculum design; to discredit the work of committees by those with a conflict of interest with the committee's work; to malign administrators for upholding requirements for staff qualifications; to justify low merit raises; to conceal the results of elections and votes; to allege lack of fitness for promotion; to silence requests for mitigation of conflict of interest in election and nomination procedures; and to impede discussion prior to faculty votes, etc. The University of Michigan Senate Assembly states the following about academic freedom:

*Universities promote the common good not through individual decision or bureaucratic calculation, but through broad-based engagement in the scholarly endeavor. Faculty members, because of their education and their institutional knowledge, play an indispensable role as independent participants in university decision making. By virtue of this role, they are entitled to comment on or criticize University policies or decisions, either individually or through institutions of faculty governance.*<sup>23</sup>

Collegiality (along with civility and ethical conduct) is a worthy goal for each member of the campus community and academic profession, but it arises from responsibly and ethically discharging one's duties in the areas of teaching, research, and service, rather than from forced definition, cultivation, or elimination of the uncomfortable aspects of disagreement, debate, and critical thinking that should be engrained in all aspects of academic decision-making.

<sup>23</sup> University of Michigan Senate Assembly 'Statement on Academic Freedom' (2010), I.

## I) What is the faculty's role in due process?

The role of the faculty in due process, as published in March 2009 in the *University Record*, includes that

*Faculty members have the responsibility to behave professionally towards their students and maintain collegial relations with their colleagues, to show the highest integrity in their research, and to serve the community as a whole. On the whole this is exactly what the faculty do, and the international reputation of the University reflects this. In those rare cases when relationships break down we need to make sure that our institutions permit the fair resolution of the disputes. [Regents] Bylaw 5.09,<sup>24</sup> although old, was forged in the heat of deeply trying times and reflects the wisdom of those who were forced to confront the need to guarantee that arbitrary action has no place in the campus community. Despite its age Bylaw 5.09 offers a model upon which to base other procedures that will ensure fair and equitable resolution of conflict.*<sup>25</sup>

It is the responsibility of each faculty member to ensure that his/her peers are receiving due process. In academia we as faculty are responsible for the welfare, advancement, mentorship, and review of our peers, for whom we oversee both the methods and standards of review. Faculty are responsible for independently verifying claims by other faculty and administrators. If something has been claimed against someone, one should not blindly trust the source of information without having seen the evidence oneself. If the evidence cannot or has not been provided, or if it has not been vetted through an opportunity for rebuttal, then it must not be considered in a decision. For example, administrators should not claim privileged knowledge about someone as a criterion for decision-making unless that knowledge has been shared with reviewers and documented and vetted through rebuttal. If the information cannot be verified, shared, or offered for rebuttal then the claims to insider knowledge must be dismissed. Each person involved in a decision about another faculty member's status must take individual responsibility for due diligence. This requires independently verifying evidence (not just trusting what is provided to you) and consulting all possibly relevant information. Per Caspari and Engdahl, due diligence that ensures due process requires the following:

<sup>24</sup> Regents Bylaws, <http://www.regents.umich.edu/bylaws/bylaws05a.html>

<sup>25</sup> 'Monthly Report,' ([http://www.ur.umich.edu/0809/Mar02\\_09/20.php](http://www.ur.umich.edu/0809/Mar02_09/20.php))

▶ *A thorough investigation includes interviews of the accuser, the accused and particularly those who witnessed the alleged misconduct.*<sup>26</sup>

▶ *A thorough investigation also includes retrieval of relevant documentary evidence.*<sup>27</sup>

▶ *A fair investigation must be free of bias and prejudice. [...] Generally, where the investigation process suggests that the employer is marshaling the facts to support a predetermined result, it will be found to violate due process.*<sup>28</sup>

▶ *When an employer becomes aware of alleged misconduct, due process requires the employer to investigate and take action within a reasonable time.*<sup>29</sup>

## J) Due process and faculty conduct:

In cases of non-dismissal, due process still applies, such as in situations that include the following types of sanctions:

*(1) oral reprimand, (2) written reprimand, (3) a recorded reprimand, (4) restitution (for instance, payment for damage due to individuals or to the institution), (5) loss of prospective benefits for a stated period (for instance, suspension of "regular" or "merit" increase in salary or suspension of promotion eligibility), (6) a fine, (7) reduction in salary for a stated period, (8) suspension from service for a stated period, without other prejudice.*<sup>30</sup>

To avoid unjust sanctions of faculty the University of Michigan Senate Assembly proposed the following resolution:

*WHEREAS students who are either complainants or respondents in investigations conducted by the Office of Institutional Equity (OIE) can appeal both OIE's findings and sanctions imposed as a consequence of OIE findings, and*

*WHEREAS faculty must be entitled to the same due process protections as other members of the university community, and*

*WHEREAS fair investigations of charges of misconduct against faculty benefit from and at times require peer evaluation,*

*RESOLVED that the Senate Assembly requests that the University institute a policy.*

*a. By which all OIE findings in which faculty are the complainants or the respondents be reviewed at the faculty's request by a body of their faculty peers which will be empowered to recommend reconsideration of the findings.*

*b. By which both OIE findings and sanctions against faculty can be appealed to the same body of their faculty peers or an appointed body at least half of whom will be members of the UM faculty senate.*

— *Approved by the Senate Assembly, April 18, 2016.*<sup>31</sup>

The ethics of due process on matters of faculty conduct, according to AAUP, apply whether the matter is minor or major; faculty are entitled to an opportunity to know their accuser, to review all evidence presented against them, to ask questions of witnesses and investigators, to have a support person or attorney to any proceedings, etc.

As a general rule, complaints against faculty should follow known procedures within university protocols. Hearsay and accusations that are second-hand do not have a place in academia. Those with complaints must come forward and use the appropriate procedures set up through Human Resources and other venues to address a concern. It is also imperative that complaints be addressed through proper methodology. It should never be the case that the first time a faculty member hears about a complaint is in a performance review document. Opportunities for rebuttal, modification of conduct (if appropriate) and mentorship should always be provided, and never should good review practices be supplanted by attempts to create a paper trail. Reviews of any kind should not be a surprise, and nor should attempts to create documentation against faculty be indiscriminately supported by offices on campus. Human Resources, OIE, and executive officers are obliged to hold faculty peers, chairs, deans, and mid-level administrators to standards of accountability and transparency, such that individuals in these roles are required to demonstrate that

<sup>26</sup> Richard L. Caspari and Kathryn M. Engdahl, 'Analysis of Investigation, Evidence, Communication and Implementation: Due Process Rights in Investigations,' *Conference Proceedings of the American Bar Association Annual CLE Conference* (2007), 5.

<sup>27</sup> Caspari and Engdahl, 'Due Process Rights,' 6.

<sup>28</sup> Caspari and Engdahl, 'Due Process Rights,' 6.

<sup>29</sup> Caspari and Engdahl, 'Due Process Rights,' 7.

<sup>30</sup> Euban, 'Faculty Termination.'

<sup>31</sup> 'Senate Assembly Resolution,' *The University Record* (Apr. 18, 2016) <https://record.umich.edu/articles/senate-assembly-resolution-041816>.



due process has occurred and to abide by all levels of relevant policy.

Responsibility for the welfare of both the complainant and respondent are essential to due process. Both parties should be informed of complaints in a timely manner so that documentation, witnesses, and other forms of evidence are still available during the investigation. According to the Office of Institutional Equity at U of M, discretion is also necessary when investigating a complaint, so as not to unduly damage either a complainant or respondent's reputation in the process of investigation.<sup>32</sup> Protecting the respondent and complainant also requires expeditiousness in the investigatory process, so as not to impose undue professional consequences, such as excessive demands upon time and productivity.

With respect to complainants, LEO faculty are guaranteed certain standards of due process, including the right not to suffer retaliation or unjust consequences for filing a grievance: *'No Employee or Union representative shall be penalized for initiating a grievance, or attending meetings at any step.'*<sup>33</sup> In order to prevent retaliation, and to ensure that all parties are afforded the same rights to due process in all roles in which they are involved in a conflict, whether as complainants or respondents, it is important that new lines of investigation be supported by separate and documented complaints that are duly filed, so as to properly initiate all protections and procedures afforded each person under review.

#### **K) The Silent Sanction:**

One action that can be overlooked as a type of sanction is the production of documentation against an employee. According to the U of M Lecturers' Employee Organization (LEO, the collective bargaining organization representing lecturers), *'Discipline is a written warning, suspension with or without pay, reduction in duties, or reduction in pay for misconduct or unsatisfactory performance.'*<sup>34</sup> Because documents finding culpability normally remain in an employee's personnel file for the duration of his/her employment with the university, and could even be accessible to future employers, attempts of supervisors to create documentation against an employee are a form of sanction and can be detrimental over the course of a faculty member's career. For this reason, faculty review boards, administrators, and supervisors must take

steps to ensure that unjust documentation is not created against a faculty member. If a faculty member feels that an unjust document has been filed against him/her, he/she should be able to attach a rebuttal to the document wherever copies are kept. Any such document should also be subject to discussion and appeal prior to finalization.

Scholarship on the rights to due process for public employees includes the following from Caspari and Engdahl:

*Public employees have a Constitutional right to due process, which includes the right to specific notice of the charges against them, an explanation of the employers' evidence, and an opportunity to respond to the charges before being deprived of a property interest in their employment.*<sup>35</sup>

The same author notes that the employee should be able to be heard early enough in the process not to be put in the position of having to change minds to defend him/herself:

*A flawed process of denying an accused employee the right to be heard can create a flawed result. The employer who makes a disciplinary decision without hearing the accused employee's side of the story may be acting on assumptions and incomplete facts. To give audience to the accused only after discipline has been determined unfairly places the employee "in the unfortunate position of trying to change the employer's mind rather than explaining her side of the story before management's mind becomes entrenched in a conclusion – an often hopeless battle." State of Montana, 122 LA 923, 927 (Calhoun, 2006).*<sup>36</sup>

#### **L) Favoritism and retaliation:**

The importance of due process in its myriad of forms in academia is necessary to defend against politics and corruption, abuses of power, and wastefulness when it comes to the public's trust and resources. If working well, the measures taken to ensure due process will be effective in curtailing favoritism, retaliation, nepotism, discrimination, and cronyism. We all have a responsibility to ensure that the institution is fair.

**Conclusion:** If you suspect that someone is not receiving due process or due diligence, it is your job to report it to the appropriate higher authority. You can also meet with a representative from Human Resources or the Office of

<sup>32</sup> SACUA, *Report on Office of Institutional Equity*, 6.

<sup>33</sup> U of M Lecturers' Employee Organization Contract (2013-18), 31.

<sup>34</sup> U of M Lecturers' Employee Organization Contract (2013-18), III.

<sup>35</sup> Caspari and Engdahl, 'Due Process Rights,' I.

<sup>36</sup> Caspari and Engdahl, 'Due Process Rights,' 5.

Institutional Equity. Report instances of failed due process promptly. This can be done anonymously at the U of M Compliance Hotline:  
<http://compliancehotline.umich.edu/>.

#### Sources and Readings:

- ▶ University of Michigan Faculty Handbook:  
<http://www.provost.umich.edu/faculty/handbook/8/8.D.html>
- ▶ Principles of Academic Due Process:  
<https://www.aaup.org/news/principles-academic-due-process>
- ▶ Academic Due Process for non-tenure Track Faculty:  
<https://www.aaup.org/news/principles-academic-due-process>
- ▶ Due Process in Sexual Harassment Complaints:  
<https://www.aaup.org/report/due-process-sexual-harassment-complaints>
- ▶ The History, Uses and Abuses, of Title IX:  
<https://www.aaup.org/report/history-uses-and-abuses-title-ix>
- ▶ The Use and Abuses of Faculty Suspensions:  
<https://www.aaup.org/report/use-and-abuse-faculty-suspensions>



### **Case Studies: Are we Cultivating, Respecting, and Understanding Due Process at UM-Flint?**

The topic of this month's newsletter is, in part, derived from an increase in the numbers of faculty at UM-Flint reporting concerns to AAUP officers regarding due process, as well as an increase in the number of incidents occurring and documents being disseminated that for some faculty are escalating a climate of intimidation, retaliation, silence, and intolerance for dissent. The rising concerns of UM-Flint faculty being reported show a pattern, which may indicate the attempt of administrators, immediate supervisors, and certain staff offices to generate damaging documentation against faculty members for the purpose of intimidation, retaliation, or to limit involvement in university affairs.

While there is a majority of effective and policy-abiding supervisors, administrators, and staff at UM-Flint, there is a clear erosion in the understanding of principles related to academic freedom, freedom of speech, the right to due process, and respect for faculty-approved procedures. Two specific public instances of concern include a document

that was disseminated by Human Resources to the CAS Council of Chairs as well as additional documents disseminated to the same group from other sources. It is unclear if these materials were presented for campus-wide practice or just within CAS, but their content is of a nature that should not be variable between units and rather should be aligned with institution-wide standards.

One of the documents in this group that is of greatest concern was authored and acquired by a for-profit consulting firm called Academic Impressions. This organization sells training, strategies, and management tactics to administrators. As this newsletter has covered in the past, reputable organizations like the *Chronicle of Higher Education* have warned that such for-profit consulting firms produce materials by those with questionable if not non-existent academic credentials and incentives, while charging excessive membership and registration fees for their services. The content of Academic Impressions promotes a corporate model of higher education and may appeal to some administrators, in part, by offering a promise of effective or efficient models of decision-making, even if they are often undemocratic, top-down, and contradictory to the values of higher education and shared governance. In the estimation of UM-Flint AAUP leadership, the use of these concepts to circumvent normative faculty governance at UM-Flint should be of concern to all faculty. While meeting the needs of students and colleagues must be a primary concern for faculty of our campus, the tone of these documents and the examples of action provided cross academic freedom boundaries, while failing to include in the documents the obligations of supervisors and administrators to ensure that due process has taken place. Instead, the focus is on how to generate negative documentation against 'problem faculty' so that such individuals may be threatened with sanctions, such as dismissal. Supervisors are framed as disciplinarians rather than mentors and colleagues, while the burden of evidence collection (as opposed to document generation) are blithely mentioned or are not indicated at all.

In the document titled *Managing Difficult Faculty Academic Impressions Webinar* by Jeanne Hey, the section 'Enforce' frames the faculty member as an ill-behaving nuisance. While we have no doubt that indeed some of us might be reasonably described this way privately by our peers, the vocabulary and solutions proposed are unduly punitive and do not reflect the academic environment of mutual trust and respect we aspire to create. The breadth of process focuses on creating documentation against an individual. Due process is never mentioned. There are no cautions regarding cultural or gender differences in styles of

communication that might be at play in a given dispute about performance or other matters. There are few if any legitimate suggestions that would stress mentorship or the responsibilities of the supervisor to educate. The tone of this document also adopts a model of supervisor that is used in corporate organizations, which is a professional manager, and not a peer who will return to the ranks of the faculty as must be necessary in order to ensure accountability of chairs to their colleagues and students. It is well known that for-profit higher-education consulting firms push a business-model form of leadership and protocols, despite their ideological conflict with the longest-standing values of higher education. While some of the steps recommended in situations with supervisees by Academic Impressions could reasonably be necessary in the types of situations described, it is their isolation from unique operating standards in higher education and from supervisory responsibility (with respect to due process), and the imbalance that this creates that is especially concerning. Such imbalanced recommendations have the potential to escalate climates of intimidation, retaliation, and silencing of dissent that are potentially already toxic in some units.

Hey outlines 'enforcement' to include:

A. *Develop a Behavioral Modification Plan with HR and Other Supervisors*

B. *Write a memo that details*

- ▶ *problem behavior*
- ▶ *many actions you've taken to address the situation, with references to documents and dates*
- ▶ *behavioral changes required*
- ▶ *monitoring and reporting method*
- ▶ *consequences if meaningful change does not happen.*<sup>37</sup>

Further, an article that appears on the Academic Impressions website offers parallel recommendations. Instead of emphasizing a chair's role as first among equals, the following statements are made:<sup>38</sup>

*If such a "difficult colleague" has tenure, many academics shrug and say there is nothing to be done. That could not be farther from the truth! [...] Academic freedom clearly gives faculty members the right to conduct research and teach as they choose, within the bounds of professionalism*

<sup>37</sup> Jeanne Hey, *Managing Difficult Faculty: Academic Impressions Webinar*, disseminated to Council of Chairs, 2018.

<sup>38</sup> Barbara A. Lee, 'Practical Advice for dealing with Problem Faculty,' Academic Impressions (2014), <https://www.academicimpressions.com/practical-advice-for-dealing-with-difficult-faculty-colleagues/>.

*and institutional requirements for curricular content. But academic freedom also brings responsibilities—to behave with respect toward colleagues and students, to refrain from harassment or discrimination, and to use care in speaking out as a private citizen. Violating these requirements can subject a faculty member to discipline, and even to dismissal. [...] So how does the department chair deal with a difficult colleague? Much the same way that a supervisor or manager in a business organization would...<sup>39</sup>*

The alignment of faculty with typical employees of a business (which is frequent in Academic Impressions material) does not agree with University of Michigan ideology. According to the Senate Assembly,

*The primary thrust of the AAUP's statements on academic freedom is that faculty members are not ordinary employees subject to the usual discipline of the American workplace. Rather, because of the nature of the educational enterprise, they are more accurately described as "appointees" (1915 Declaration) or "officers" (1940 Statement) of the institutions they serve [...].<sup>40</sup>*

Methods to monitor a 'problem' faculty member are then recommended to include interviewing their students and colleagues to report on their behavior. There is no mention of how to do this, if it should be done at all, in a manner that does not damage the faculty member's reputation and standing with his/her students and peers.

Lee goes on to note that in some types of problems feedback from other faculty who are assembled (seemingly to review the problem faculty member's conduct) by the chair him/herself might be useful. Lee states: *consider appointing a small committee of faculty peers to work with the faculty member if the problem is with teaching or relationships with students.*<sup>41</sup> Lee is evidently not aware that review by peers, assembled through methods approved by the institution's faculty (not through the potentially biased membership selections of a chair or dean) are considered a standard requirement of discipline against faculty for any reason, not just those matters related to teaching or research. Lee also fails at any point to acknowledge the role of faculty governance in the matters that she discusses. A faculty member trained in governance might recommend that chairs ensure that their departments have clear faculty-authored and faculty-ratified procedures

<sup>39</sup> Lee, 'Practical Advice.'

<sup>40</sup> U of M 'Statement on Academic Freedom,' 4.

<sup>41</sup> Lee, 'Practical Advice.'

for how to manage faculty conduct, responsibilities, and comparable matters initially through departmental bylaws. There is no acknowledgment that the ideal situation is for faculty to set policies on these matters themselves that can then be followed by all subsequent chairs.

On the matter of bullying, Lee recommends that

*If the faculty member's behavior could be interpreted as bullying, consult state law—you may have obligations to deal with such behavior that come from law as well as institutional policy and generally recognized academic custom.*<sup>42</sup>

In this case a concern would be that education and mentorship are not even mentioned, nor the chair's responsibility for the climate of the instructional unit. Preliminary steps including talking with the individual about one's institution's definitions of bullying are skipped in order to jump to legal actions. Equally concerning is that there are no warnings that a chair or dean must be well educated in what is considered bullying in academia and at his/her institution before jumping to action on conduct that might actually be related to cultural or gender differences, for example. But, according to Lee, those consulting Academic Impressions' pro-corporate vision of higher education need not fret about the potential legal consequences of their actions:

*If you take these steps, you should be able to reduce the negative consequences of a difficult colleague. In the unlikely event that you and the institution are sued, it is quite likely that the case will either be dismissed before trial or that you and the institution will prevail. Judges don't like difficult colleagues any more than the rest of us do!*<sup>43</sup>

Academic Impressions authors do not seem, either in the materials on the website nor those disseminated at Council of Chairs, to point out that caution should be used when acting against one's supervisees, especially given that whether someone is 'difficult,' 'a bully,' etc., is often highly subjective and might easily be ill-assessed. The emphasis is, instead, upon acting against one's supervisee as quickly and fully as possible.

A document included in the dissemination to Council of Chairs was the *Follow-Up to Professional Development: Managing Difficult Faculty*. Demonstrating how materials

from Academic Impressions diminish supervisory respect for the academic profession as a democratic arena of equals, the presentation identifies various types of 'problem' faculty. These include the following: '*Bullies, Prima Donnas, Privilege Abusers, Poor Teachers, Non-Producers, No-Shows, Meeting Disrupters, Authority Defiers, Those who Never... , Trouble-Makers, and Other.*'

Notwithstanding the lack of professionalism and subjectivity in these labels, their alignment of 'problem' faculty with those who question authority, make trouble, and interrupt meetings fall closely into the activities in which faculty are required to engage in order to be responsible stewards of their governance authority. The concerning inferences based on these labels are that faculty who voice dissent, insist on discussion, and promote democratic rather than autocratic decision-making are to be silenced and neutralized. These labels undermine U of M standards as articulated by the Senate Assembly: [*O*]ver the past several decades various universities have experienced an internal drift toward political orthodoxy and intolerance of dissent; this drift should be stoutly resisted, even as the bounds of orthodoxy themselves shift.<sup>44</sup> Recommendations for how to manage these types of faculty include visiting their classes (it is unclear whether the individual would be duly notified of a visit), talking about them with their colleagues, and monitoring their behavior in faculty meetings, and circulating written sanctions or warnings to as wide a circle of supervisor and administrative recipients as possible.

Another document disseminated to Council of Chairs included the memo on *Expectations* to Professor C. It models copying negative documentation about a faculty member, without noting that the faculty member should have the opportunity to refute the claims in the letter before such official documentation is widely disseminated. Professor C's conduct is presented to include inadequate preparation of class material and failure to grade quickly enough. Imposed sanctions are then prescribed to include having to have all lessons approved by the Chair and requiring all graded materials to be returned within 2 weeks. No qualifications are noted to protect Professor C from undue expectations and violations of academic freedom. Instead of discussing what a reasonable turnaround time for grading would be, given Professor C's discipline, forms of assessment, number of students, availability of teaching assistants, etc., the chair is encouraged to use his/her arbitrary judgment without discussion. More troubling is the suggestion that the chair is qualified to review lesson

<sup>42</sup> Lee, 'Practical Advice.'

<sup>43</sup> Lee, 'Practical Advice.'

<sup>44</sup> U of M 'Statement on Academic Freedom,' 4.



plans, and there is no mention that care must be taken to avoid violations of academic freedom.<sup>45</sup>

The third document presented a case study of Expectations of Professor X, who is critiqued in reference to a dispute with another faculty and for exhibiting behavior that the chair describes this way: *'[Y]ou have exhibited behavior that is insubordinate, uncooperative, belligerent and unprofessional.'*<sup>46</sup> The use of subjective descriptors should be questioned. In order for such vocabulary to be justified, these descriptors would have to be defined in the institution's official literature. Examples of Professor X's unprofessional behavior that are listed by the chair include having filed a grievance against a colleague, as well as lack of collegiality, among many other findings. Professor X is threatened with dismissal. In a real, rather than hypothetical, scenario the actions described about Professor X would indeed merit modification and even disciplinary action. However, nothing in the case study advises on how to ensure that these types of claims are accurate—there is no mention of due process or due diligence as requirements prior to final solutions. Once again, academic freedom is threatened in the sanctions that Professor X rewrite his/her syllabi and that he/she must *'update and improve [his/her] course design and delivery in accordance with [his/her] chair's recommendations.'*

The recommendations in both sample actions for chairs against 'problem faculty' are teleological towards dismissal, even for tenured faculty. Both included outright threats of dismissal. It seems that no examples of how to manage problems and mentor prior to such an extreme solution were provided, which means that the most costly solutions for the university are the only ones being concretely promoted (there is often cursory mention of offering support to a faculty member, but the suggestions are so vague as to be unhelpful). It is with great concern that the faculty at UM-Flint should consider this material, and the fact that materials from Academic Impressions were presented to more than two-thirds of the campus's leadership as appropriate for use in the most serious of situations over the large number of faculty whom they supervise. The consequences of such materials for campus climate should also be of concern.

The last document known to have been a part of the materials disseminated came from Human Resources of

UM-Flint dated January 2018. Although it contains some reasonably neutral and common-sense recommendations, they do still cross a line into unduly compromising academic freedom and opening the door for unjust accusations against faculty. For example, one of the recommendations regarding managing faculty conduct proposes that faculty must always teach from content personally authored for every one of their courses. It is suggested that use of any material not personally derived constitutes a failure to meet one's responsibilities. One example offered to chairs of how to handle poor performance of this nature is as follows:

*Your course materials appear to be mostly borrowed or copied from other faculty members or from a publisher. It is important to be sure to stay current on the subject matter and provide materials which reflect your own original work. Borrowing other faculty member's documents not only gives the appearance that you may not have command of the subject matter but also using outdated materials. You will need to submit to the Chair course materials which are either all or mostly developed by you by [specific date].<sup>47</sup>*

Once again, perceptions of faculty conduct are being advanced without qualification of appropriate mitigation by other factors. On the issue of shared course materials, or whether course materials are current, the admonition ignores that some programs/departments deliberately standardize course content by agreement of the relevant faculty, while some faculty co-teach or jointly develop material in a way that could give the impression of copying. Another example from Human Resources critiques a faculty member for failing to include assignment due dates in the syllabus. If indeed a department's faculty voted to require that all of its instructors include such information, the comment might have some merit. However, the sanctity of a faculty member's syllabus as an expression of academic freedom, intellectual property, and disciplinary expertise is wholly ignored in the example. Another example related to whether a syllabus sufficiently demonstrated high expectations of students. It seems that Human Resources staff did not consider that the examples that they used for how to force changes in faculty performance were regarding decisions that are often most expertise-based and where faculty are typically afforded the most independence.

Perhaps most concerning in Human Resource's examples of how to manage faculty evaluations is the example regarding student evaluations. It is inferred in a

<sup>45</sup> 'Performance Expectations for Professor C,' disseminated to Council of Chairs, 2018 (unknown author and source).

<sup>46</sup> 'Performance Expectations for Professor X,' disseminated to Council of Chairs, 2018 (unknown author and source).

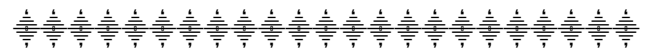
<sup>47</sup> UM-Flint Human Resources, 'Performance Evaluations and Conversations,' (January 2018), 8.

hypothetical evaluation that a faculty member is failing in teaching responsibilities for a given course if course evaluation results are ever below a 4.0. Student evaluations are a hotly debated issue among educators. They are known to incorporate bias for gender, race, age, etc. They are also increasingly in question, unreliable and even unjust, as literature in AAUP's *Academe* has recently shown. By including such a recommendation of how to manage faculty performance, Human Resources overstepped into determining for the faculty the criteria by which they should be evaluated, which is faculty purview, and even set a numerical standard of performance for UM-Flint faculty that could conceivably allow a chair or dean to cite Human Resource's example when critiquing a faculty member's evaluation results.

Human Resources also models how to critique a faculty member for grade inflation and the quality of guest speakers invited to a class, as well as finding fault with the faculty member if course averages vary depending on the course or section.<sup>48</sup> Again, the problem is that Human Resources is providing examples of action to take against faculty members on academic matters without qualifying the recommendations to account for academic freedom, the faculty member's individual expertise, and the institution's other policies on these latter issues. Hopefully Human Resources derived these examples from faculty of some source, but they should also have been vetted by UM-Flint faculty.

Another Human Resources example of how to evaluate faculty presumes that faculty who employ multiple-choice testing are performing inadequately. The example recommends this kind of response: *'Please consider test questions which move away from multiple choice questions to more problem or case-based type questions. This will allow a better learning outcome for the type of class you are teaching.'*<sup>49</sup> Such an example weakens understanding of the academic freedom and judgment of faculty and provides a dangerous example of how inappropriate it is for non-faculty staff to be writing or selecting suggested evaluation content for faculty. Because many of the examples of misconduct allege misconduct based on failure to meet non-contractual obligations, it is also concerning that Human Resources did not choose to use examples that reflected common contractual requirements across the university. But, this ignores the main problem, which is that however this document came into being, it circumvented the primary group responsible for setting standards for

UM-Flint faculty and evaluating them: the faculty themselves. Whether the Human Resources materials were intended to be campus-wide or specific to the unit in which they were shared, such a document should have been commissioned through an independent faculty body, such as Faculty Council. Moreover, such materials for the evaluation of faculty performance should not have been disseminated without review and approval by Faculty Council *and* the governing faculty. It is strongly recommended that the campus's administrators insist that faculty must be consulted upon and oversee faculty evaluation matters. Faculty Council could take special interest in these events, especially since some of its members can present faculty positions on these matters through their attendance at Council of Chairs. Faculty Council should also ask the governing faculty how they wish to set up faculty oversight over the production of such materials, as well as establishing a liaison with Human Resources and other offices to work collaboratively in the future. Human Resources may have correctly identified a need in the development of the presentation that was shared, but the most important step of including the governing faculty and their representatives in the process does not seem to have occurred.



### **Governance Policy Highlight: Your Personnel File and Your Rights**

One of the ways in which documentation to undermine due process is kept on faculty (whether legitimately or illegitimately) is through personnel files.

On this matter it is essential to know your rights. According to the State of Michigan:

*In addition to basic due process requirements, employees are entitled to inspect and make copies of their personnel files as a matter of both University policy and Michigan law.*<sup>50</sup>

All faculty have a legal right to review their personnel files. Once accessed there are also opportunities to make sure that the contents meet the University of Michigan Standard Practice Guide requirements for what is allowed to be in a personnel file. According to the SPG, which is applicable to all 3 campuses, every department should have internally approved procedures for personnel-file policies at

<sup>48</sup> UM-Flint Human Resources, 'Performance Evaluations,' 11.

<sup>49</sup> UM-Flint Human Resources, 'Performance Evaluations,' 12.

<sup>50</sup> SACUA, *Report on Office of Institutional Equity*, 4.

the departmental level, which requires that the faculty of those instructional units be the ones to devise, approve by vote, and implement the policies:

*Departmental information relating to individual staff members outside the definition of a personnel record should be retained in accordance with individually established departmental policies which should be documented. For example, for materials supplied in support of appointment of a new faculty member, the department may wish to retain until the faculty member is evaluated and promoted. Publications need only be kept to document what appears on a curriculum vitae; and, Faculty and staff members may submit rebuttals to any documents in their personnel files which will also be included in the file.<sup>51</sup>*

The following information is also provided via *The HR Specialist* regarding access to and content of personnel files in the state of Michigan:

**Michigan:** *Upon written request, employers must allow employees to view their personnel records. Employers are allowed to charge employees a reasonable copying fee. "Personnel record" means a record kept by the employer that identifies the employee, and that is used relative to that employee's qualifications for employment, promotion, transfer, additional compensation, or disciplinary action.*

*A personnel record does not include: employee references; materials relating to the employer's staff planning with respect to more than one employee; medical reports and records made or obtained by the employer; information of a personal nature about a person other than the employee; information that is kept separately from other records and that relates to a criminal investigation; records limited to grievance investigations that are kept separately; records maintained by an educational institution that are directly related to a student and are considered to be education records; and records kept by an executive, administrative, or professional employee that are not accessible or shared with other persons.<sup>52</sup>*

Much of these standards are reiterated in the LEO Contract:

<sup>51</sup> SPG 201.46, <http://www.spg.umich.edu/policy/201.46>.

<sup>52</sup> The HR Specialist, <https://www.thehrspecialist.com/14541/access-to-personnel-files-50-state-laws>.

**Section A.** *The Employer will maintain personnel records for each Employee. The records shall include documents pertaining to job performance, professional achievement, and awards. The Employee shall have the right to add material to his or her personnel record, including but not limited to documentation of service or professional awards, nominations, or achievements.*

**Section B.** *The source of all materials and electronic correspondence received from department chairpersons, administrative officers or other responsible sources shall be indicated. Anonymous communications shall not be placed in an Employee's personnel record. The Employee shall have the right to place, in the personnel record, a written response to any document contained in his or her personnel record, and that response shall be attached to the appropriate document.*

**Section C.** *The Employee shall have the right to review his or her personnel record at a reasonable time and place and in the presence of a designated Employer representative. A representative of the Union may, with the Employee's authorization, accompany the Employee while he or she reviews his or her personnel record.*

**Section D.** *Upon request, the Employer shall provide the Employee with a copy of part or all of his or her current personnel record, subject to a standard duplication fee.*

**Section E.** *Access to personnel records shall be limited to those individuals with a legitimate need to know in connection with their University responsibilities.<sup>53</sup>*

If a supervisor adds something to your file that you feel is unjust, you have the right to attach rebuttals and review the documents.



► Professional Development Webinar (all online) for Best Practices in Minutes and Agendas:

<http://blogs.umflint.edu/aaup/webinars-for-professional-development/>

► How to join the AAUP: Go to [www.aaup.org](http://www.aaup.org) and follow instructions for membership.

► For help from AAUP officers: contact [flintaaup@umflint.edu](mailto:flintaaup@umflint.edu)

► For resources go to: <http://blogs.umflint.edu/aaup/>

► To unsubscribe from AAUP e-mail notices: <http://blogs.umflint.edu/aaup/wp-content/uploads/sites/27/2018/06/To-unsubscribe-to-the-UM.pdf>

<sup>53</sup> U of M Lecturers' Employee Organization Contract (2013-18), 118-19.