

Academic Legal Case Studies

Facilitated by:

Julie Sheppard, General Counsel
Florida Institute for Human & Machine Cognition
University of West Florida

Isis Carbajal de Garcia, Deputy General Counsel
Florida International University

Youndy Cook, Deputy General Counsel
University of Central Florida

Lawrence (Larry) Glick, Senior Associate General Counsel
Florida Atlantic University

Kofi R. Glover, Vice Provost, Human Resources Management
University of South Florida

Steve Prevaux, General Counsel
University of South Florida

Gerard Solis, Deputy General Counsel
University of South Florida

EVALUATION

1. As a new chair, you decide to try to improve the evaluation of teaching in your department. Accordingly, starting the spring semester, you begin weekly-unannounced classroom observations of departmental faculty. During these observations, you discover that a newly hired faculty member is extremely difficult to understand—students appear frustrated and confused by the individual’s lectures. You have also received student evaluations and complaints about the teaching practices of the newly -hired faculty member. You are now prepared to use the information you gathered in the annual evaluation.

What issues are relevant to addressing the above situation?

LEAVE

2. A sabbatical leave was approved for one of your faculty members for the next semester, beginning in six weeks. You’ve just learned, however, that another faculty member in the department suffered a severe heart attack and it is not yet known when he will return to work. Another faculty member has also approached you indicating that her mother has just been diagnosed as having Alzheimer’s disease and she will need to take leave under the Family and Medical Leave Act for at least the next three months until her mother’s situation is addressed. Your current budget does not provide sufficient funds to replace the faculty member who suffered a heart attack or the faculty member who will be on leave to care for her mother.

What options are there to address this problem?

FACULTY RELATIONS

3. Faculty member A comes to you with a serious concern about faculty member B in the department. Faculty member A alleges that faculty member B has asked that she review and edit materials which the faculty member wishes to publish as fiction in the popular press, unrelated to any assignment. The fictional material contains sexually explicit content and the character bears a strong resemblance to faculty member A. Faculty member A confides in you that she believes that faculty member B wrote the materials with the intent of establishing a relationship.

How do you respond? Does it make a difference if A was a Professor and B an Assistant Professor? What if it was reversed?

ACADEMIC PERFORMANCE

4. After completing the department members' annual evaluations, one of the senior tenured faculty members requests to meet with you regarding his evaluation. The faculty member states that your ratings of his performance in teaching and research are unacceptable given the number of years that he has been teaching in the department. The faculty member reminds you that if it were not for his record of publications, the department's program would not have received the notoriety it has. He demands that you change his ratings to the highest on the scale or he will file a grievance, lawsuit, etc.— whatever it takes to right the wrong.

How should you respond?

DISTANCE LEARNING

5. A faculty member in your department develops an internet-based distance learning module for students in a self-paced learning program. After a year, numerous students provide feedback that the online module has been instrumental in their success in the course and in understanding the subject matter better. Other faculty members in the department ask you if they can use the faculty member's module. You meet with the faculty member to discuss the use of the module by other faculty members. The faculty member states that she put a great deal of time and effort into developing the module outside of her assigned duties and she should not be required to allow other faculty members to use it. The faculty member says she may be willing to share if there is some financial incentive to do so.

What are the options to address the competing interests?

NON-REAPPOINTMENT AND LAYOFF

6. You are hired by University X in the spring semester to improve the quality of the educational experience in your department. After meeting with the dean and former chair, you make the decision to provide a notice of non-reappointment to a non-tenured faculty member who does not appear to be current in his coursework or research. The notice of non-reappointment states that his classes will no longer be offered as the reason for the action. The letter of non-reappointment is sent to the faculty member in the summer; however, the faculty member does not receive the letter until August as he has been out of the country for the past eight weeks. Just before the fall term begins, you receive a demand letter from the faculty member that the letter be retracted stating that his performance has always been rated "above satisfactory" and his tenure appraisals indicate no problems in his progress toward tenure. Shortly after you receive this letter, you also receive a call from the Provost's Office that the faculty member has filed a grievance alleging that he was laid off and is entitled to recall and other benefits.

What are the next steps in addressing the situation?

PUBLIC RECORDS

7. A faculty member makes a formal public records request to you for copies of the following materials and demands that these be made available to him by the close of the business day. The faculty member states that he needs these documents to confirm his suspicions that he is being discriminated against.

- current resumes of all of the faculty members of the college,
- all evaluations that have been made regarding the performance of faculty members in the college,
- information regarding the current salaries, rank, and years in rank of all faculty members in the college,
- all documents relating to the departmental budget for the past five years,
- and all written correspondence from the university regarding disciplinary actions taken against any faculty member and/or grievances filed by any faculty.

It is conservatively estimated that a response to this demand for information request would consume 50 hours of staff time and involve copying over 2,000 pages.

What are your options regarding this request?

CHANGE IN ASSIGNMENTS

8. In accordance with college procedures, you complete the annual assignments in spring for the coming academic year. Due to changes in enrollment and funding reductions to your department, over the summer you revise a number of course assignments throughout the department. In order to be fair to all faculty, you attempt to work a system where every faculty member receives at least one class that they regularly teach but most faculty are impacted by the changing assignments. You attempt to personally discuss the assignment changes with all of your faculty but the majority are off campus throughout the summer and do not return calls. When the faculty members return to campus just before classes begin, many receive notice for the first time of the change in their assignments. Faculty member #1 requests that you reinstate the course to which he was assigned because that is the course for which he prepared. Faculty member #2 argues that, as the senior member of the department, he should have been exempt from teaching a basic general education lower level course and adamantly refuses to teach the course. Faculty member #3 claims she is being discriminated against because of her age and will take her case to the president. Faculty member #4 claims he is being discriminated against by virtue of race and will file a union grievance. Faculty member #5 explains that he will be filing an FMLA leave request that will prevent him from completing the assignment.

How do you handle this situation?

TENURE AND PROMOTION

9. A minority faculty member hired with two years of service credit toward tenure is now in her fourth year at the university and is being evaluated for tenure and promotion. The tenure criteria include "demonstrated excellence in teaching and research," as well as "demonstrated meaningful contributions in service." The faculty member has not been recommended for tenure by the department committee solely due to lack of research productivity. The faculty member requests to meet with you and discusses her concern that while her research portfolio is not strong, she has been a team player and has participated in requests from the President and Provost's office to sit on search committees throughout the campus. She also presents information to you that reflects her assignment during the current and previous years has consisted primarily of instruction (3 courses) with no extra time for service and research. She shows you assignments of others in the faculty tenure and promotion chain that have assignments consisting of two courses. While the faculty member does not specifically say that she believes she is being discriminated against because of her minority status, you believe the search committee assignments are excessive and relate directly to her minority status.

How should you handle your recommendation and subsequent steps in the tenure and promotion process to insure that faculty member receives fair treatment?

OUTSIDE ACTIVITY

10. You become aware through outside media sources that a faculty member in your department may be engaged in an outside activity without having submitted an outside activities form or received university approval. You meet with the faculty member who states that she is a paid consultant to a major oil company and has been assisting the oil company with evaluating the impacts of an environmental disaster on your community. She claims that this is public service and she is doing the environment justice and working on her own time. Recent newspaper reports indicate that the company will be involved in major litigation and you believe that your faculty member will be involved in the litigation. You are also aware that other members of your department have outstanding research proposals to federal agencies that if funded may involve similar research.

What concerns should be raised with the faculty member? What action(s) should be taken to resolve the issue? What factors should be considered in determining whether the faculty member's outside activities constitute conflict of interest?

SCIENTIFIC MISCONDUCT

11. A graduate student meets with you about a senior member of your department and produces a research paper with a B grade containing comments from the Senior Professor. The graduate student then shows you a professional scientific publication that contains the graduate student's identical B paper with zero corrections with publication rights attributable solely to Senior Professor. Graduate Student indicates that she is mainly upset because she received a B and then the paper was published. She assures you that Senior Professor did not contribute in any way to the paper. She requests that her grade be changed.

How do you respond?

CONDUCT UNBECOMING AND SOCIAL MEDIA

12. You are visited by several faculty who show you pictures on a student's Facebook page that reveal what appears to be a large party where one of your new faculty members appears on video pole dancing and using graphic hand gestures that depict sexual activity. Your faculty members are outraged that this reflects poorly on the department, are concerned that parents may pull their students from the program and that the faculty member has been tagged by name in the photos.

What, if any, action should you take?

DISCIPLINE AND OFF CAMPUS ARREST

13. A tenured faculty member in your department was arrested off campus for selling cocaine to an undercover police officer. The University police chief has confirmed that he has seen a copy of the videotape of the incident made by the Sheriff's Office and that indeed it is your tenured faculty member on the videotape handing what appears to be a packet of cocaine to a young lady. The chief also has obtained a copy of the police report, which confirms that the substance, which changed hands, was cocaine.

Faculty member claims that the reason he was arrested was because he has been an outspoken critic of the Sheriff's Office stemming from their raids on local bars that cater to

gays and lesbians. He argues that he will be cleared of all charges and that the University should take no action since he has not been convicted of any crime, citing that “he is innocent until proven guilty.” He indicates that he intends to fight the charges leveled against him and will fight the University if it takes any adverse employment action.

How do you proceed to address the situation?

SPECIAL ACCOMMODATIONS

A Communication Department was approved to conduct a search for a tenure-earning faculty member at the rank of assistant professor. The department has been through the search process and selected three individuals to be interviewed. Each individual was interviewed by the search committee and was required to teach a demonstration class. Following the process an individual was selected and accepted the position.

Several weeks later word reached the chair that the new hire had told a member of the department that she/he would need an office and classroom with windows because she/he had a fear of tornadoes. The chair has a dilemma because office space is at a premium and traditionally office space has been allocated on the basis of service time and rank. Because a faculty member is willing to switch classrooms, the chair is able to accommodate that request. Additionally, the new hire was interviewed in a conference room without windows and did not reveal her need for a special accommodation.

What would you do to resolve this problem?