

RESPONSES TO CONSIDER WHEN ADDRESSING CASES

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?

- a. Refer to your collective bargaining contract—usually class visitations cannot be unannounced. Or, if unannounced classroom visits are not completely prohibited, make sure the purpose of the visit and/or use of information obtained is permitted (e.g., visits for disciplinary investigation ok, but for evaluation purposes not ok).
- b. Determine if problem stems from poor English proficiency and/or poor teaching practices, and refer to resources on campus, if any, for assistance.
- c. If the classroom visitations were not authorized, such information cannot be used in an evaluation and may be grounds for a grievance by the faculty member.
- d. Generally, student evaluation information can be used in an evaluation.

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?

- a. Postpone sabbatical, if possible under the applicable collective bargaining agreement or university regulations. Explore negotiating with the affected faculty member and reaching a solution by agreement.
- b. Determine the type of leave requested – paid sick leave or non-paid leave.
- c. Request additional funds from dean for overloads and adjuncts.
- d. Is teaching an online distance learning course an option?

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?

- a. Read material first to be able to form an independent objective opinion. Consider other reasons A was asked. Counsel faculty B if you believe there is a strong resemblance.
- b. Faculty A could be overly sensitive, but there may be a reason for the sensitivity so don't be dismissive.
- c. Faculty A should not feel compelled to edit material.
- d. If B is senior to A, consider counseling B for making a non-work request of A who is going for tenure and may need B's support. If counseling or contact made with B, educate regarding the prohibition against retaliation.
- e. Consider referring to EOP/EEO, recognize duty of chairs to report complaints of harassment.

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?

- a. Review evaluation with faculty, but do not feel intimidated about faculty's "stellar" record or threat to file a grievance, etc. Do not use his threat of escalation to dismiss the matter or pass along to someone else (provost's office or counsel). Focus on the factual basis of the evaluation with objective examples.
- b. Consider different course/research assignment moving forward.
- c. Consider peer evaluations (if permitted in the policy/CBA).
- d. Provide specific feedback on possible corrective measures to try to make it a win-win for faculty member and department.
- e. Doesn't matter what happened in prior years or with prior chairs. Focus is on what happened this past year. Usually a CBA will specify what scope of work can be considered in the evaluation.

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?

- a. What is your Intellectual Property policy/CBA article? Who does the intellectual content belong to? Made with appreciable University support? Made as part of the assignment or as a work for hire?
- b. Discuss with requesting faculty.
- c. Consider the faculty member's skill in developing online materials in future assignments. Perhaps assign the creation of a similar or improved module for use by the department, and/or other courses. Consult with provost's distance/e-learning representative in this regard for possible assignments outside of the department.

NONREAPPOINTMENT 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?

- a. Does chair have authority to issue letters of non-reappointment? If so, was this consistent with University practice? Did faculty member receive the required notice as per term of employment?
- b. Meet with faculty relations person as to grievance process and discuss how and who should respond to letter you received.
- c. Non-reappointment vs. layoff. The reason given in the letter sounds like a layoff? If

so, review layoff rights under collective bargaining agreement. Does the CBA permit using non-reappointment in lieu of layoff? Should any reason for non-reappointment have been stated in the letter? Is a reason required?

- d. Use available University resources to assist faculty member in seeking employment elsewhere.

Example: 2 year or less -1 semester notice
2 year or more -1 year

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 the 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?

- a. Immediately contact the legal office or other office on campus that handles public records requests.
- b. Should be able to charge for cost of printing and staff time to gather documents given extensive nature of request. It is always helpful to provide an estimate up-front as this may reduce scope of request. Follow policy or practice regarding cost recovery.
- c. Don't have to compile/create a document that does not exist in order to respond to a public records request, but consider large databases and electronic records.
- d. University has a reasonable amount of time to make these documents available.

- Resumes - ok to give if they are available
- Faculty evaluations – no, they are confidential if designated by institution
- Current salaries, rank, and year in rank – yes, can give
- Budget documents – yes, can give
- Written correspondence involving disciplinary actions - yes, can give disciplinary action correspondence. Yes, can give grievance correspondence once the grievance process has concluded.

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?

- a. Determine whether changes are possible. If not, faculty should teach. Filing a grievance does not change the responsibility to teach.
- b. It is the chair's responsibility to assign courses, not the faculty.
- c. Call faculty meeting and outline the issues underlying the changes and request cooperation and entertain suggestions that could prove useful.
- d. Faculty cannot refuse to teach a course if course is necessary for the program and/or students. Check the assignment article in the CBA.
- e. The fact that no contact information was available is a problem.
- f. Engage faculty relations person from beginning to work through issues including discrimination, FMLA leave and possible insubordination.

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?

- a. Meet with faculty administrators regularly involved in process.
- b. Discuss possibilities of allowing faculty member to withdraw from process and submit following year or reduce service credit.
- c. If this is possibility, address research and instructional assignment issue to allow faculty member same opportunities as others and reduce service commitment on searches.
- d. Draft fair tenure and promotion recommendation based on progress as reflected by university assignments.
- e. Explore why an assignment dispute or grievance was not submitted earlier if it was evident that research progress would be impacted or the course load was unfair/discriminatory.

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?

- a. Review conflict of interest and conflict of commitment policy with faculty member and require faculty member to immediately fill out activity report.
- b. Engage faculty affairs in your review and resolution of conflict.
- c. Determine the scope of the consultant work and the impact on the department's research portfolio.
- d. Faculty member may need to choose between university employment and consulting work.
- e. If approved, faculty member should be advised not to represent her work or attribute it to university or to use faculty position and relationship to university in reports or testimony.

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 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?

- a. Engage University Scientific Misconduct Committee and Faculty Affairs to investigate and determine if Senior Professor plagiarized Graduate Student's paper.
- b. Discipline up to and including termination may result for Senior Professor.
- c. Refer Student's grade to university grade appeals process, which may entail an unbiased committee to review.

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?

- a. Meet with Faculty Affairs to discuss university policy on conduct unbecoming and at-work versus off-work conduct.
- b. Review faculty handbook and university policies.
- c. Follow University procedure for counseling/discipline.
- d. Schedule department meeting or training session to discuss appropriate/inappropriate conduct.

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?

- a. Place faculty member on leave with pay while investigating and remove from classroom.
- b. Conduct an independent investigation -- acquire a copy of the tape, police report, etc.
- c. Negotiate resignation or issue intent to terminate letter. There is no requirement to wait for the criminal process. Understand different burden of proof in criminal court vs. employment action.
- d. Conduct unbecoming a public employee.
- e. Would this be a different result if the arrest was made on campus?