

## J & A Council Report on Amendments to Faculty Handbook

January 11, 2006

The Council on Judiciary and Appeals has voted unanimously to recommend two motions (one of which has three parts) for revisions to the Faculty Handbook. This document presents both the text of the motions and the reasons for them.

[I] Present rules allow the same case to be appealed to the Board of Regents (BOR) twice, which can result in a pointless repetition of hearings and a lengthening of the appeals process. The general sense of this first motion is to allow for only one appeal to the BOR for each case.

The problem arises because there are two appeals channels, (a) administrative and (b) through the Faculty Senate Committee on Appeals (FSCA). At present, each channel can go to the BOR. The intention of the motions to follow is to allow both channels to operate on campus, but to permit only one appeal to go to the BOR. This intention can be realized by adding a section to the faculty handbook (Motion Ia) and making two other small adjustments (Motions Ib and Ic).

It may be noticed that Motion Ia concerns what happens when an administrative appeal has proceeded all the way to the presidential level but it contains no correlative comment on what happens if an appeal through the FSCA reaches the presidential level. This asymmetry is not a defect; instead, it is a consequence of the fact that FSCA recommendations are recommendations to the provost. If the provost's decision does not satisfy an appellant, it is either automatically reviewed by the president (if the FSCA appeal was an appeal of a provost's decision), or may be administratively appealed to the president by the appellant, in accord with FH 9.2, first paragraph (and see also the text of Motion Ia and the rationale for Motion Ic below). An administrative appeal *after* this point would make no sense; it would amount to asking the president to reverse a decision just taken, without there having been any new investigation. Thus, procedures implicit in Chapter 9 (which will be made somewhat more explicit by Ia and Ic) already cover the case where an appeal by the FSCA route precedes an appeal by the administrative route.

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Motion Ia: Add a new section to the Faculty Handbook, with the following number and two-paragraph text.

9.3.6.3 A decision may be appealed to the Board of Regents only once. Therefore, if the administrative appeal channel is used and the president denies the relief sought, appellants must decide whether (a) to appeal directly to the Board of Regents or (b) to avail themselves of the opportunity to use the Faculty Senate Committee on Appeals (FSCA). Election of alternative (a) will preclude subsequent use of alternative (b). If the FSCA is used, its recommendation will go to the provost. If the provost denies the relief sought, the case may be appealed to the president or to the Board of Regents. If an appeal is made to the president and the president denies the relief sought, appellants may appeal to the Board of Regents.

This section is not to be construed as implying that the administrative channel must be pursued to the presidential level before using the FSCA. Instead, faculty members may pursue the administrative appeal channel to any level up to and including the president before turning to the FSCA. But faculty members may decide to turn to the FSCA either as a first recourse or in response to denials of relief sought at lower administrative levels.

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The first paragraph of FH 9.2 describes the administrative appeals channel, and mentions the Board of Regents. There should be a sentence added to this paragraph that will refer its readers to the material in the new section, 9.3.6.3. We quote the paragraph here and then propose the addition of one sentence to it in Motion Ib.

## 9.2. Appeal Through Administrative Channels

An appeal through administrative channels is initiated when a written appeal, stating the case, naming the appellee(s), and requesting specific remedies is presented to the administrator or administrative body whose sphere of responsibility includes the events grieved: e.g., a departmental chair, a dean, the provost, the president, or the Board of Regents. Appeals presented initially to the provost or president may be referred to the Faculty Senate Committee on Appeals, where they will be treated as described below.

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Motion Ib: Add the following sentence to the end of the first paragraph of FH 9.2.

Regarding appeals to the Board of Regents, see section 9.3.6.3.

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The first paragraph of FH 9.3.1 describes several matters concerning the FSCA. It reads as follows:

### 9.3.1. Faculty Senate Committee on Appeals

Established by the Faculty Senate to consider appeals by any faculty member, the Faculty Senate Committee on Appeals (FSCA) is composed of at least 16 faculty members, plus the chairperson who is elected annually by the Faculty Senate. No member may be a departmental, college, or university administrative officer. Details of the committee structure are described in the Faculty Senate Bylaws. The FSCA is a body that investigates and recommends a course of action; it is not an advocate group for faculty members who believe that they have been treated unfairly. When a case is brought to the committee, it is investigated with due consideration given to the appeal and to the counterarguments offered by the appellee(s). Following a confidential committee investigation and discussion of the allegations and pertinent evidence, a committee recommendation is made relative to the remedies sought. These recommendations are sent to the provost for final disposition in the case. If the provost's decision is not

acceptable, a faculty member may take the case to the Board of Regents.

The end of this paragraph should also have a reference to the new section. In addition, however, the last two sentences of this paragraph are (a) inconsistent with current practice, in which appeals of provosts' decisions are reviewed by the president, when the FSCA recommends reversal and the provost reaffirms the original, appealed decision. And (b) if the FSCA channel is used first, the description of the administrative channel implies that a provost's decision can be appealed to the president. We therefore suggest that these two sentences be replaced by three sentences, as indicated in motion Ic.

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Motion Ic: Replace the last two sentences of the first paragraph of FH 9.3.1 with the following three sentences:

These recommendations are sent to the provost. If the provost's decision at this point is not acceptable to the appellant, it may be appealed to the president and, ultimately, to the Board of Regents. (See also section 9.3.6.3.)

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II. The second sentence of FH 9.3.2.1 is: "In a confidential preliminary conference, the chairperson of the FSCA will advise the potential appellant regarding the appropriate procedures in an appeal process and provide current copies of the FSCA Rules of Procedure."

Despite attempts to locate the "FSCA Rules of Procedure", the present chair of the FSCA has been unable to find it, or to establish that it ever existed. We therefore recommend the following motion.

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Motion II: Delete the last 10 words (i.e., "and provide current copies of the FSCA Rules of Procedure") from the second sentence of FH 9.3.2.1.

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## 9.2. Appeal through Administrative Channels

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The administrator or administrative body that receives the appeal shall investigate it and present the appellant(s) and the appellee(s) with a written response within 20 administrative working days from the date the appeal was received. Working days here are defined as days that the university is officially open for business. The written response shall describe the evidence considered, state the decisions made, and review the reasoning that led to the decisions.

The response time for appeals filed near extended periods when classes are not in session or summer session may be modified accordingly to accommodate the availability of the principals and witnesses appropriate to the appeal. Other adjustments may be made in the appeal procedure's time schedule, provided the appellant(s), appellee(s), and the party investigating the appeal agree to them, or, failing that, the approval of the provost is obtained. An appeal through administrative channels may be withdrawn by the appellant(s) any time before the response is received.

## 9.3. Appeal through Faculty Senate Committee on Appeals

### 9.3.1. Faculty Senate Committee on Appeals

Established by the Faculty Senate to consider appeals by any faculty member, the Faculty Senate Committee on Appeals (FSCA) is composed of at least 16 faculty members, plus the chairperson who is elected annually by the Faculty Senate. No member may be a departmental, college, or university administrative officer. Details of the committee structure are described in the Faculty Senate Bylaws. The FSCA is a body that investigates and recommends a course of action; it is not an advocate group for faculty members who believe that they have been treated unfairly. When a case is brought to the committee, it is investigated with due consideration given to the appeal and to the counterarguments offered by the appellee(s). Following a confidential committee investigation and discussion of the allegations and pertinent evidence, a committee recommendation is made relative to the remedies sought. ~~These recommendations are sent to the provost for final disposition in the case. If the provost's decision is not acceptable, a faculty member may take the case to the Board of Regents.~~ [These recommendations are sent to the provost. If the provost's decision at this point is not acceptable to the appellant, it may be appealed to the president and, ultimately, to the Board of Regents. \(See also section 9.3.6.3\).](#)

No member of the FSCA shall vote on or participate in an investigation of an appeal of an action in which he/she is or has been directly involved. All appeals brought to the committee are

handled in the strictest confidence. The committee may develop other rules of procedure subject to approval by a majority vote of the Faculty Senate.

## **9.3.2. Procedures in a Faculty Appeal**

### **9.3.2.1. Contacting the Committee.**

Potential appellants should contact the Faculty Senate Office to obtain the name of the chairperson of the FSCA. In a confidential preliminary conference, the chairperson of the FSCA will advise the potential appellant regarding the appropriate procedures in an appeal process ~~and provide current copies of the FSCA Rules of Procedure~~. If the faculty member agrees, the chairperson of the FSCA may, at this point, act as an ombudsman to determine if the appeal can be settled by negotiation before proceeding through the steps described below.

### **9.3.2.2. Initiating an Appeal.**

The faculty member must do the following:

- complete the Request for Study of an Appeal form
- sign a release form
- provide a written appeal that carefully states and documents the allegation(s) in the case, names of the appellee(s), and states the relief sought

If in the judgment of the chairperson the grounds for the appeal are questionable, the FSCA shall vote on whether or not it will consider the case.

### **9.3.2.3. Timing of Initiation of an Appeal.**

Appeals may be initiated at any calendar time within 45 B-base working days of the action/decision being contested. Exceptions to this 45 day limit may be granted at the discretion of the FSCA. If the time available between the submission of the appeal and the beginning of an extended period without classes is insufficient for an investigation and preparation of a final report, the FSCA chairperson may postpone initiating an investigation of an appeal until the end of the first week following that period. The decision to postpone obligates the chairperson to send written notification to appellant(s) and appellee(s). When less than 45 working days are left in a spring semester, an appeal may be held over the summer.

## **9.3.3. Appointment of an Ad Hoc Investigative Committee**

Within five working days of the acceptance of an appeal by the committee, the FSCA chairperson shall appoint an Ad Hoc Investigative Committee of three. The appellant(s) and appellee(s) shall be informed of the Ad Hoc Committee membership. The appellee(s) will be given a copy of the materials submitted by the appellant and a copy of the FSCA Rules of Procedure. The appellant(s) and appellee(s) may each request removal of one member from the Ad Hoc Committee, that member(s) to be replaced by another chosen by the FSCA chairperson.

The appellee(s) has five working days to submit to the Ad Hoc Committee a written response to the appellant's request for a Study of an Appeal. A copy of this written response shall be given to the appellant(s).

### **9.3.3.1. Ad Hoc Investigative Committee Procedures.**

The Ad Hoc Committee shall keep a written log when conducting an investigation. It shall, where possible, interview all witnesses specified by the appellant, by appellee(s), and by other principal parties to the appeal. Other persons may, at the discretion of the Ad Hoc Committee, be interviewed. Interviewees may be accompanied by a counselor(s) at their expense. Only the Ad Hoc Committee, its legal counsel, if any, and persons approved by the party being interviewed shall be present during these confidential interviews.

### **9.3.3.2. The Ad Hoc Investigative Committee Report.**

After completing its investigation, the Ad Hoc Committee shall prepare a written report, which shall include a description of the appeal, the relief sought, the evidence appropriate to each allegation in the appeal, and the findings relative to each allegation. Copies of confidential letters of recommendation that were solicited during the process that led to the appeal will not be included in the Ad Hoc Investigative Committee's report. A tentative set of recommendations shall also be prepared. These will be considered separately from the report by the full FSCA. This report and tentative recommendations shall be submitted to the appellant(s), to the appellee(s), and to all FSCA members so that all parties concerned will have no less than five B-base faculty working days to consider the report prior to a meeting of the FSCA called to act on said appeal.

### **9.3.3.3. Response to the Ad Hoc Investigative Committee Report.**

Within this five-day period the appellant(s) and appellee(s) may submit to the chairperson of the FSCA written explanatory statements, stating any disagreements on matters of fact and/or interpretation with the investigative committee's findings. The chairperson shall arrange a reciprocal exchange of explanatory statements between the appellant and appellee as well as distribute such statements to the full committee. Failure by any of the parties to submit an explanatory statement shall be interpreted as acceptance of the factual and interpretive information of the investigative committee's findings.

### **9.3.3.4. Terminating an Appeal.**

At any stage prior to submission of the investigative committee's report, the appellant may request in writing to the FSCA chairperson that consideration of the appeal be terminated. In such a case, the chairperson of the Ad Hoc Investigative Committee shall submit to the FSCA chair and to the appellee, a summary report on the general nature of the appeal and its resolution. This report shall be written so as to maintain confidentiality in the case. Once the Ad Hoc Committee report has been submitted, however, the appellant may not terminate an appeal.

### **9.3.4. FSCA Hearing of Case**

After the five-day period described above, a quorum of the FSCA shall meet in closed session to review the appeal, the Ad Hoc Investigative Committee findings, its recommendations and all written explanatory statements submitted by the appellant(s) and appellee(s). In this discussion, the full FSCA will formulate specific recommendations based on the Ad Hoc Investigative Committee's tentative recommendations regarding disposition of the appeal. Upon returning to open session, a quorum of the FSCA shall vote by secret ballot on the recommendations in the case. Any FSCA member, present for voting, may individually submit any written commentary, corrections, rebuttal, or opinions as to why the recommendations should be accepted or rejected.

#### **9.3.4.1. FSCA Reporting Procedures.**

The FSCA recommendations, including a tally of the vote, the investigative findings and attachments, the responses of the appellant(s) and appellee(s), and any concurring or dissenting opinions, shall be submitted by the FSCA chairperson to the provost within 45 B-base faculty working days from the date of the appointment of the Ad Hoc Committee. Adjustments may be made in the time schedule, provided the appellant(s), appellee(s) and the Ad Hoc Investigative Committee agree, or, in the event of no such agreement, with the approval of the FSCA chairperson.

The FSCA chairperson shall also inform the appellant(s) and appellee(s) of the committee's recommendations within five B-base faculty working days of the committee's meeting.

### **9.3.5. Limitation**

Once considered by the committee, an appeal may not be reopened unless there is significant new evidence in the judgment of the FSCA.

### **9.3.6. Responsibilities of Provost and President**

After review of the FSCA report and holding any additional necessary interviews, the provost or a designee shall prepare a written report on the final disposition of the appeal and the university's action in the matter. The FSCA recommendations may be accepted as submitted. If the provost rejects or only partially accepts the recommendations, written reasons must be provided to the FSCA. The provost's signed report shall be addressed to the appellant(s), with copies sent to the appellee(s), and the chairperson of the FSCA within 15 administrative working days (days the university is officially open) from the date of submission of the FSCA recommendations. The chairperson shall inform the FSCA of the response by the provost.

#### **9.3.6.1. Appeal of an Action of the Provost**

In cases where the faculty member is appealing an action of the Provost, the Provost's report will not be the final disposition of the appeal, but will be sent together with the FSCA report and recommendation to the Provost for reconsideration of the initial decision. If the Provost's decision is unchanged, the Provost's report and recommendation will be forwarded to the President within 15 working days of submission of the report. The President's report containing

his/her decision shall be sent to the faculty member, the Provost, and the chairperson of the FSCA within 15 administrative working days from the date of submission to the President. If the President rejects the appeal, written reasons must be included in the President's report. The FSCA chairperson shall inform the FSCA of the response by the President.

### **9.3.6.2. Appeal of an Action of the President**

In cases where the faculty member is appealing an action of the President, the FSCA recommendation will be submitted to the President who will reconsider the initial action. If the President's initial decision is unchanged, the President will prepare a report containing written reasons for his/her decision. The FSCA report and the President's report will be forwarded to the Board of Regents within 15 administrative days of the submission of the FSCA recommendations. The President's report shall be sent to the faculty member and the chairperson of the FSCA.

### **9.3.6.3 Appeal to Board of Regents**

A decision may be appealed to the Board of Regents only once. Therefore, if the administrative appeal channel is used and the president denies the relief sought, appellants must decide whether (a) to appeal directly to the Board of Regents or (b) to avail themselves of the opportunity to use the Faculty Senate Committee on Appeals (FSCA). Election of alternative (a) will preclude subsequent use of alternative (b). If the FSCA is used, its recommendation will go to the provost. If the provost denies the relief sought, the case may be appealed to the president or to the Board of Regents. If an appeal is made to the president and the president denies the relief sought, appellants may appeal to the Board of Regents.

This section is not to be construed as implying that the administrative channel must be pursued to the presidential level before using the FSCA. Instead, faculty members may pursue the administrative appeal channel to any level up to and including the president before turning to the FSCA. But faculty members may decide to turn to the FSCA either as a first recourse or in response to denials of relief sought at lower administrative levels.