

The HOP Committee met on November 5 to develop this additional report to the Senate on various matters before it.

9.44. Retaliation. The Committee noted that there had still been no administration response to the Committee's main suggestion that the 30 day period for filing a complaint be changed to 90 days, the time provided for in UT Austin's HOP for all complaints of wrongful employer conduct.

In addition, the Committee notes two other concerns. First, the language of proposed 9.44 does not explicitly indicate what the effect of missing the filing deadline would be. Second, the provision does not provide for the possibility of there having been a series of events that were not at the time recognized by the employee as retaliation but that finally, in cumulative effect, were perceived to have been. 9.44 should include language to this effect, and provide that the time for the filing of such a complaint begins running only when the employee could reasonably have been expected with due diligence to have realized the retaliatory nature of the conduct. This concern could be addressed in part by adding a definition of "wrongful retaliation" to be a "particular event that itself constitutes retaliation, or a series of events whose cumulative effect constitutes a retaliation."

10.02. Academic Misconduct. This seventeen page provision would establish the procedure by which a faculty member could be accused and convicted of "misconduct" in "research or other scholarly activities." "Scholarly misconduct" is defined as "fabrication, falsification, or plagiarism" in not only research and writing, but also in "copyrightable expression" and "teaching-related activities, such as the creation of classroom materials, tests, etc." The most severe penalty provided for such misconduct would be termination.

The Committee has scheduled a meeting with Marianne Woods, the administration contact for this provision, for November 12. Because of the complexity of this proposal, and its extraordinary potential significance to faculty, the committee requested, through the Senate President, that the November 29 deadline for completing the Senate's review of the proposal be extended. The Committee was advised on Friday that the Provost had turned down this request.

The Committee reiterates strongly its position that requiring it and the Senate to complete their review of such a sweeping proposal by November 29 was unreasonable, as illustrated by the following comments on major aspects of the proposal. The Committee acknowledges the fundamental significance of research integrity and the need for procedures to respond to research misconduct. However, the Committee is concerned that, as written, the policy has numerous flaws that could have counter-productive effects on faculty research activities and even be misused. (The potential for misuse is illustrated by one example of academic misconduct in the proposed policy, ". . . a researcher inaccurately lists the salary of an employee in the grant budget.")

The proposal is not even in completed form, because the "UTSA *Misconduct Proceeding Manual*," which "describes in more detail the timelines, processes and procedures to be used in a Misconduct Proceeding," specifies the precise "time periods and the process for receiving time

extensions,” and “supplements and aids in the implementation” of the policy, is not finished and thus has not been provided to the Committee.

There are numerous other serious problems. . The Committee believes that the absence of checks and balances and due process for faculty being charged under this policy constitutes a fundamental deficiency. The proposal is highly legalistic, and is said to have been based on policies required by the federal government and to be virtually identical to policies at other universities, but the Committee has not yet been able to obtain the information necessary to verify these points. There seem to be inconsistencies within the proposal, almost as if sections had been cut and pasted in from various sources, resulting in problems with clarity and consistency. It also seems to go beyond whatever would be required by NSF regulations, since it would cover not just research activities but teaching as well.

As conceptualized it appears that the entire procedure is controlled by the office of the Vice President of Research and therefore is outside the normal chain of command of faculty committee, department chair, dean, and provost. Yet the broad sweep of these procedures could potentially affect teaching as well as all research, both funded and unfunded. It is also stated outlined that the procedures apply to students, which would circumvent the normal chain of command for student affairs up to and including the Vice President of Student Affairs as well as the Dean of the Graduate School. Similar issues arise with respect to staff. Therefore, because the proposed policy is likely in conflict with numerous other aspects of the HOP, or at least needs to be harmonized with them, it should also be reviewed by other relevant Senate committees, such as the Academic Tenure and Freedom Committee

The Committee found that, from the perspective of someone accused of such misconduct, many questions arise. One is whether the standard of proof ought to be something stronger than the bare minimum “preponderance of the evidence.” Another is what resources the accused person would be provided with, such as guidance on the process, access to potential witnesses who are university employees, access to necessary records, etc. There are also many due process-oriented issues, such as the selection process, and membership of the undefined “Inquiry” and “Investigation” Committees. It also unknown whether there would ever be an actual formal hearing at which both sides would be able to hear and cross-examine witnesses and produce evidence, what “some opportunity to be represented by an attorney” means, and why interviewees would be allowed to “correct” their recorded or transcribed testimony after the fact. We note the grievance procedure in the HOP at least has detail with regard to these issues. We also note that misconduct can include “six or more years before the allegation was reported to UTSA when either the alleged wrongdoer has cited, republished, or otherwise used the allegedly tainted scholarly work..” The Committee also notes that the proposal should clearly provide that less severe penalties, such as counseling or reprimand, may also be imposed in appropriate cases. It also recommends that the policy should apply to both faculty and administrators.

The HOP Committee recommends that the Senate wholly reject the proposed policy and request that it be returned to the Vice-President of Research. The VPR should constitute a committee with strong faculty representation to research successful and reasonable Academic Misconduct policies that afford faculty reasonable protections and revised procedures that involve faculty governance and the normal chain of command from the outset.

HOP Revisions Process and Provost Guidelines. The Committee also wishes to bring to the attention of the Senate a major gap in the review process for changes in the operating procedures of the

University. Actual changes to the HOP itself, even extremely minor ones, are now routed to the chair of the Senate and then either to the whole Senate or to the HOP Committee for review and report to the Senate. However, there is no similar policy for Provost Guidelines, which expand upon—and sometimes even significantly modify—the provisions of the HOP.

This gap is exemplified by the difference in the handling of the proposed modification of HOP 2.24, which concerns third year reviews, and the Provost's Promotion and Tenure Application Guidelines dated July 30, 2010, which can be found on the webpage of the Vice Provost for Academic and Faculty Support.

The proposed modification of HOP 2.24, which is on the agenda for this month's Senate meeting, was minor: it moved the time of the third year review from the fall semester to the spring semester. Nevertheless, that proposed revision was reviewed by the HOP Committee and then reported on to the full Senate for its consideration, essentially providing two levels of faculty review and input.

In contrast, there was no formal review by the Faculty Senate of the Provost's Promotion and Tenure Application Guidelines, even though they constitute extensive elaborations on how 2.10, the tenure section of the HOP, is to be applied, and are thus of deep interest to the Senate and all faculty. For example, one section in the guidelines, "Criteria for Promotion and Tenure," suggests that early tenure will become increasingly unlikely, provides guidance to tenure-track faculty on various expectations regarding their work, and adds new considerations for promotion to full professor.

The HOP Committee recommends that this issue be addressed with the Provost, that the normal HOP procedures be used, and if there is a reason why they cannot be used, that procedures be developed in which the Senate is formally notified of proposed Provost Guidelines and provided the opportunity to comment on them.