Adopted: June 2, 1998

ACADEMIC SENATE
Of
CALIFORNIA POLYTECHNIC STATE UNIVERSITY
San Luis Obispo, CA

AS-501-98/ETF
RESOLUTION ON
FACULTY DISPUTE PROCESS

Background: Faculty members have agreed to be civil in their interaction with other faculty as noted in the Cal Poly Faculty Handbook based on the Association of University Professors Code of Ethics. At the present time there is no faculty process to mediate such disputes of civility. Some actions stemming from a lack of civility in faculty matters include: improper labeling of colleagues, improper personal attacks, personal attacks via email with several faculty copied, grant application awards jeopardized by personal attacks, portions of a department's faculty not talking with other portions of the department's faculty, dysfunctional departments, and others.

WHEREAS, University faculty have agreed to act in a collegial manner to one another; and

WHEREAS, There have been a number of faculty disputes where a process has been perceived as absent, or has been viewed by faculty as unfair; unacceptable, or ineffective; therefore, be it

RESOLVED: That a faculty dispute process be established consistent with the attached document utilizing informal solutions first and then formal solutions; and, be it further

RESOLVED: That the a Faculty Ethics Committee be established consistent with the attached document; and, be it further

RESOLVED: That the Faculty Ethics Committee be charged with creating procedures to implement a faculty dispute process consistent with the attached document.

Proposed by: Faculty Affairs Committee
and the Ethics Task Force
Date: April 21, 1998
Revised: June 2, 1998

Please note that this document was updated from the copy in your May 19th agenda to add a more recent AAUP Statement and adding a section on informal/formal processes.

FACULTY DISPUTE PROCESS

Faculty Conduct

California Polytechnic State University at San Luis Obispo maintains high ethical standards for all faculty. In particular, the university endorses the principles set forth in the following *Statement on Professional Ethics by the American Association of University Professors* (June, 1987):

Statement on Professional Ethics

Introduction

From its inception, the American Association of University Professors has recognized that membership in the academic profession carries with it special responsibilities. The Association has consistently affirmed these responsibilities in major policy statements, providing guidance to the professor in his utterances as a citizen, in the exercise of his responsibilities to students, and his conduct when undertaking research. The Statement on Professional Ethics that follows, necessarily presented in terms of the ideal, sets forth those general standards that serve as a reminder of the variety of obligations assumed by all members of the profession.

In the enforcement of ethical standards, the academic profession differs from those of law and medicine, whose associations act to assure the integrity of members engaged in private practice. In the academic profession the individual institution of higher learning provide this assurance and so should normally handle question concerning propriety of conduct within its own framework by reference to a faculty group.

Civility between faculty members is a matter of faculty responsibility.

Statement on Professional Ethics

1. Professors, guided by a deep conviction of the worth and dignity of the advancement of knowledge, recognize the special responsibilities placed upon them. Their primary responsibility to their subject is to seek and to state the truth as they see it. To this end professors devote their energies to developing and improving their scholarly competence. They accept the obligation to exercise critical self-discipline and judgment in using, extending, and transmitting knowledge. They practice intellectual honesty. Although professors may follow subsidiary interests, these interests must never seriously hamper or compromise their freedom of inquiry.

2. As teachers, professors encourage the free pursuit of learning in their students. They hold before them the best scholarly and ethical standards of their di ciplin . Professors demon trate respect for the student as an indi idual and adhere to their proper role as intellectual guide and counselor. Prof sors make every reasonable effort to foster honest academic conduct and to assure that their evaluations of students reflects each student's true merit. They respect the confidential nature of the relationship between professor and student. They avoid any exploitation, harassment, or discriminatory treatment

of students. They acknowledge significant academic or scholarly assistance from them. They protect their academic freedom.

3. As colleagues, professors havc obligations that derive from common membership in the community of scholars. Professors do not discriminatc against or harass colleagucs. They respect and dcfend the free inquiry of associates. In the exchange of criticism and ideas professors show due respect for the opinions of others. Professors accept their share of faculty responsibilities for the governance of their institution.

4. As members of an academic institution. professors seek above aU to be effcctive teachers and scholars. Although professors observe the stated regulations of the institution, provided the regulations do not contravene academic freedom. they maintain their right to criticize and seek revision. Professors give due regard to their paramount responsibilities within their institution in dctennining the amount and character of work done outside it. When considcring the interruption or temlination of their service, professors recognize the effect of their decision upon the program of the institution and give due noticc of their intentions.

5. As members of their community. professors have the rights and obligations of other citizens. Professors measure the urgency of thcse obligations in the light of their responsibilities to their subject. to their students, to their profession, and to their institution. When they speak or act as a private persons they avoids creating the impression that they speak or act for their college or university. As citizens engaged in a profession that depends upon freedom for its health and integrity. professors have a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.

Examples of lack of faculty civility may include the following: faculty deliberately ignoring other faculty; a faculty member interrupting office conversations: personal attacks in singular, group. or E-mail settings; allegations of hidden agendas or implications that a person is out to get them; an unwillingness to work with another faculty member for no specified reasons.

Informal Solution

lnfonnal efforts to resolve a lack of faculty civility are encouraged. Faculty lalking with faculty is the most direct method. Expert stafr in the Employee Assistance Program are ready and willing to negotiate, mediate. or utilil.e other dispute resolution techniques to assist in civility issues. A third party may be a necessary catalyst for resolution. These services arc available and without charge to faculty members.

Formal Solution

Infonnal crforts may not solve civility issues. and the use of more formal means may be fclt necessary by one or more faculty memhers. In order that the faculty of Califomia Polytechnic State University at San Luis Obispo be responsible for faculty civility, it is recommcndcd that the Academic Senate create a Faculty Ethics Commillee. The purpose of this committee is to investigate and resolve disputes brought by members of the univcrsity faculty against colleagues. The Ethics Committee shall consist of 7 tcnured faculty members appointed by the Executive Committee of the Academic Senate for a two-year tcnn and represellting each of the colleges and Professional Consultative Services. The Faculty Ethics Commillce chair shall be elected by members of the commillee. The commillee shall devclop procedures appropriate to its functions and shall make periodic reports of its activities to the Academic Senate and to the Provost and Vice President for Academic Affairs.

Authority of Faculty Ethics Committee

1. Investigation and Resolution of Disputes:

For all disputes that fall within its jurisdiction, the Faculty Ethics ommittce shall have the authority to conduct an investigation of the dispute and to make recommendations to the Provost. The Faculty Ethics Committee shall have the authority to determine whether the dispute should be resolved by a fonnal hearing. The committee may, at its discretion. mediate disputc in casc where the mediation appears likely to provide a resolution or to refer to appropriate disputc rc olution resources available by the university (e.g. Employee Assistantc Program).

2. Jurisdiction:

A. Matters within the Faculty Ethic Committee's Jurisdiction

(I) Violations of AAUP Code of Conduct,

(2) Enforcement by the university of regulation. or statutes governing the conduct of faculty members not overseen by other jurisdictions,

(3) Other dispute. that may arise betwcen faculty members that seriously impairs their ability to function effectively a ' a membcr( ) of the llni ersit)'.

B. Matters Excluded from the Faculty Ethics Committee's Jurisdiction

(I) Disputes in which the relief requested is beyond the po\ cr of the uni\'ersity to grant

(2) Disputes being considered by another di pute resolution entity or under another procedure within the uni ver 'ity (e.g. . sexual harassment SOle m, amorous rdationships etc.)

(3) Disputes being heard or litigated before agencies or courts Outside the university.

The wli versity shall providc training appropriate to the authority of the Faculty Ethics Committee.

Conduction of Faculty Ethics ommittcc Investigations

1. Request for Investigation:

Disputes between faculty members arc encouraged to be resolved between the parties wherever IX) ssible. Assistance to mediate the dispute i ' encouraged. Where personal resolution is found to be unsuccessful and consultation with the department chair has not resolved the malter, a request for in vestifation may proceed. There is no requirement that a complainant utilize this informal process before Iilin" a fonnal complaint.

Investigations by the Faculty Ethics Committee shall be initiated by the submission of a written complaint to the chair of thc committec. The complaint must contain:

(i) a concise statement of the conduct complained of;

(ii) the person or persons involved;

(iii) the relief requested;

(iv) the efforts already made by the complainant to resolve the dispute; and

(v) an aflinnation that the dispute is not pending in some other forum in or outside the university.

Complaints may contain more than one claim of wrongful action and seck more that one fonn of relief. Claims should he preferably be presented the quarter after occurrence. The claim must be raised within 12 months of the perceived wrongful action. The complaint may not exceed 5 pages.

Along with the complaint the complainaDl may submit uPlxxting or clarifying documentation. The 'c may include \ ritten argument by, or on behalf of. the complainant and may mention carli r events alleged to be related to tllC c1aim(s). Such argument may not exceed 20 pages. The commillec also may request t the complainant to submit further documentation where doing so might be vilal to the committce's decision.

A quorum shall consist of 5 members of the Faculty Ethics Committee.

The Faculty Ethics Committee may reject complaints that do not meet its criteria without prejudice to the complainant's ability to correct the defects and submit a new complaint. The committee

also may reject complaints that arc excessive or too vague or disorganizcd to provide the basis for effecti ve inquiry.

Should the committee decide the complaint does not fall within its jurisdiction. the committee shall dismiss the complaint. If the complaint falls within the committee's jurisdiction, the committee shall notify the complainant who then shalt be required to send to the person or persons whose allegcd conduct is the basis for the complaint (hereafter, the other side) a copy of all materials submitted earlier to the committee.

2. Authority to Reject Insubstantial Complaints:

After considering the complaint and accompanying materials, the commluee may reject the complaint if, in its judgment. the complaint is insubstantial or the dispute is not sufficiently related to the concerns of the academic community to justify further investigation. In making this detennination, the committee may take into account whether the complaining party has made baseless or insubstantial complaints in the past The committee also may reject complaints if, as evidenced by the complaint and accompanying documentation, the complainant has not made adequate efforts to resolve the dispute prior to invoking these procedures.

3. Response to Request for Investigation:

If thc complaint is suitah[e for investigation, the committee shall request and expect a wriucn response from the other side. The response must meet the same standards specified for complaints: its position stated concisely in no more that 5 pages with a limit of up to 20 pages of supporting or clarifying documentation. The commiuee also may request the other side to submit further doculllentation where this might be vital to the committee's endeavors. The committee may set reasonahle time requirements for the submission of materials in rcsponse to a complaint If no rcsponsc is made, the committee may take such inaction into consideration in its resolution of the dispute.

4. Scope and Conduct of the Investigation:

Upon determining that a particular complaint is subst,Ultial and within its jurisdiction, the committee shall investigate the complaint. The nature and means employed in pursuing the investigation, including the interviewing of relevant parties and gathering of relevant infonnation. shall be at the discretion of the committee hut the investigation shall be as extensive as nccessary to resolve thc dispute fairly. The committee may conduct its own interviews. request additional evidence from the parties, consult with individuals it considers potentially helpful, and review the written materials already before it. At any stage of the investigation, the committee may exercise its ability and discretion to resolve the dispute tl1rough mediation and reconciliation between the parties or refer the matter to an appropriate dispute resolution resource available within the university.

5. Concluding the Investigation:

The investigation shall be concluded when any of the following occur:

(a) tllC disputc is resolved with the consent of the parties;
(b) the committee rejects the complaint for reasons;
(c) the committee issues its report and recommendation to the Provost;
(d) the committee deternlines that a fonnal hearing should be held.

In its report to the Provost, the committee shall indicate in writing the results of its investigation. including its view of the merits of the claims(s) made in the complaint. the resolution of any factual disputes essential to the committec's conclusion, and the committec's judgment about what actions. if any. should be taken by thc university. The report need be no more detailed than necessary to summarize tlle committee's findings.

Within 30 days after receipt of a report from the committee. the PrO\'bst shall, in writing, cither affirm or modify the report or refcr it back to the committee with objections. The Provost's response shall be delivered to the chair of the committee and to the parties involved. Failure to act within the 30-day time period shall constitute an affirmation of the committee's decision.

If the report is referred back. the c Jmmittee shall reconsider the case and. taking into account the objections or suggc. tions of the Pro\'ost, the committee shall resubmit the report, with any modifications, to the Provost, who may affirm, modify, or reject it. The Provost's decision shall be final and conclu ;ive. and the matter in question hall be deemed closed, unless either party requests an appeal to thc Pre ident within 30 day after receipt of a written copy of the provost's decision.

If at any point in its investigation the committee detemlines that a fannal hearing must be held. the dispute may proceed directly to the forma.l hearing. In such instances, the committee shall prepare a brief report setting forth the reason(s) for moving directly to a fonnal hearing.

Formal Hearings

1. Disputes for which a Formal Hearing is Appropriate:

Formal hearing hall be held in the following categories of disputes; (a) disputes in which formal hearings are mandated by law, and (b) di putes in which the committee determines that a hearing is appr priate be all c the is. ues arc so serious and the fact. so unclear that li\e Ie. timony and qua 'i-judicial procedures are appropriatc to resolve the dispute fairly. Formal hearings hould be the exception, not the rule, in faculty dispute resolution. No fonnal hearing hall be held if the c mplainant expresses the desire, in writing, not to have uch a hearing.

2. Preliminary Procedures:

A. Heaingng Panel

There shall be a Hearing Panel consisting of members from the Faculty Ethics Committee The panel members hall have no conniet of intere. t Witll tlle dispute in question. Members will disqualify themselves from participation in any case in which they arc a principal or if they feel they cannot be impartial. The Hearing Panel shall decide al l cases properly brought before it under the pnx:cdures spccilied in this document.

H. Statement of Charges:

After suhll1issionto the committee the cOlllplainalll shall. within)0 days. send a Slatement of Charges to: the other side and the chair of the committee The Statement or Charges shall contain the following: (a) a statement, not to exceed 5 pages, of the charge or charges and the relief requested (0) a copy of any supporting or clarifying documention, not 10 exceed 2() pages (c) a copy of any further <hx:ulllentation that might be requested by the Hearing Panel. and (d) an initial list or witn :sses to be called, accompanied by a brief description of why their testimony would be relevant to the panel (the names of additional witnesses to be communicated when they become known) (e) a copy of any pertinent university policies or procedures. state statutes. contractual agreements, or other documents upon which the cOlllplainan t relies, and (I) a fonnal invitation to the other side to attcnd the hearing. Hath parties may be accompanied by counsel or their choice. 11' the complainant docs not submit materials previously listed within the 3D-day time limit. the Hearing Panel may take such inaction into considerate ion in its resolution of the dispute.

C. Answer:

Wilhin . () days or receipt of the Statement of Chargcs, the other side shall send an Answer 10: the complainant and the chair or the Faculty Ethics Committee. Thc Answer shall respond to the claims made in the Statement of charges Ilmay not exceed 5 pages in length and any accompanying or clarifying docW11entation may not excced 20 pages. Thc Answcr also shall include an initial list of witne 'ses to be called. accompanied b . a brief description or why their testimony would be rclcvantto the Panel (the names of other witnesses to be conullunicated when they become known). The Hearing Panel may request the ubmi sion of runhcr documentation from an answering party where the panel believes this may be or assistance to it.

The Answcr also may contain a challenge t the complain:U1I's entitlement to a formal hearing. in which case the Hearing Panel will consider the decision to grant a fonnal hearing. In such a case the Hearing Panel hall indicate in writing its reasons for concluding that a hearing i not warranted. Reason may include the insufficient importance or the di pute or the degree to which the dispute can be re: 01 ved fa.irly based on the paper slIbntission of the parties.

D. Procedure Where No Answer or Hearing Waived:

The committee shall expect an Answer from the other side. If no Answer is filed or the other side states that no hearing is desired, the Hearing Panel shall resolve the dispute as it deems fair, based on the information submitted by the complainant and independent investigation the Hearing Panel chooses to conduct. In such a case the Hearing Panel shall prepare a written report of its findings. This report shall be submitted to the parties and to the Provost.

E. Time and Place of Hearing:

Upon receipt of the Statement of Charges and the Answer, if the Hearing Panel concludes that a formal hearing should take place, the Hearing Panel shall set a time and place for the hearing. The time ordinarily should be at least 30 days after submission of the Answer, but there should be no unreasonable delay beyond that point.

3. Procedures for Formal Hearings

A. The hearing is to be conducted in private.

B. The responsihility for producing evidence, and the ultimate burden of proof by a prepondemncc of the evidence that the complainant's allegations are tnIC and a remedy is warranted, rest on thc complainant. The Hearing Panel may prescribe the order in which evidence is presented, and the way in which arguments are made in order to facilitate resolving the dispute. Both sides shall be permitted to introduce evidence and make arguments to the Hearing Panel but the Hearing Panel may place reasonable restrictions on the time allotted for questioning, or argument, or on the number of witnesses in order to facilitate a fair and efficient resolution of the dispute. The Hearing Panel also may detennine whether any evidence or argument offered is relevant to the dispute, and may exclude irrelevant evidence. The rules of evidence which guide courts of law shall not he binding at the hearing. but may be consulted by the Hearing Panel in its discretion.

C. The Hearing Panel may, if it so desires, proceed independently to secure the presentarion of evidence at the hearing, and it may request the parties to produce evidence on specific issues the panel deems significant. The Hearing Panel also may call its own witnesses. if it chooses, and may question witnesses called by the partics.

D. Parties on either side may elect to have their positions and evidence presented in whole or in part hy the legal counsel or they may elect to have legal counsel available to them only for consultation. The Hearing Panel shall facilitate full examination of the evidence, including the cross-examination of witnesses where appropriate.

E. A verbatim record of the proceedings shall be kept and a full transcript shall he made available to the Hearing Panel al its option. The cost of the reporter and the transcript shall be paid by the uni versity. The complainant has a right to review the tr,lOSCript.

F. The Hearing Panel, may, at its discretion, adjollrn the hearing to permit the parties to obtain furthcr evidence, or for other legitimate reasons.

G. The Hearing Panel may request writlen briefs from the parties. either before the hcaring or upon its completion.

4. Decision of the Hearing Panel:

After the conclusion of thc hearing, the Hearing Panel shall consider the evidence and the written submissions of the parties. The Hearing Panel then shall prepare findings of fact and a decision regarding the merits of the dispute, and a recommendation of the action, if any, that should be taken by the Provost.

At the same time, a copy of the final report from the committee shall be provided to each of the parties.

5. Decision of the Provost:

Within 30 business days after receipt of the repon, the Provo t shall, in writing, either affinn or modify the repoll or refer it back to the committee with objections. The Provost's response shall be provided to each of the partie and the chair of the committee. Failure to act within the 30-day time period shall constitute an affirmation of the committee's decision. If the rcpoll is referred back. the commillcc shall reconsider the case and, taking into account the objections or suggestions of the Provost. the commiucc then shall rcsubmitlhe repol1, with any modifications, to the Provost, who may affinn. modify, or reject it.

6. Decision of the President:

The President will be the final appeal body. The President's decision shall be final and conclusive. A copy of the Presidem's decision will be given to the parties and to the chair of the Faculty Ethics Committee.

State of California
Memorandum

RECEIVED

JAN 13 1999

Academic Senate

CAL POLY

SAN LUIS OBISPO
CA 93407

To: Myron Hood
Chair, Academic Senate

Date: January 6, 1999

From: Warren J. Baker
President

Copies: P. Zingg, D. Conn,
S. Banks, W. Bailey,
A. McDonald,
M. Suess

Subject: AS-501-98/ETF-Resolution on Faculty Dispute Process

Based upon the recommendations of the Provost's staff, I am pleased to approve the above Resolution of the Academic Senate which establishes a procedure for addressing disputes among faculty members. It is intended that this procedure be used by the Academic Senate Faculty Ethics Committee to address problems dealing with racial and sexual incidents as well as general uncivil behavior. Cal Poly is committed to the fair treatment of its entire faculty, and the establishment of a Faculty Ethics Committee as an Academic Senate committee will be an important addition to our existing processes.

Please extend my gratitude to members of the Academic Senate and the Ethics Task Force for their contributions in developing this new faculty dispute process.