

**Annual JRB Report
December 11, 2012**

This report has been unanimously approved by the JRB.

JRB Membership (January - December 2012)

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| 1. Jonathon Bean (COLA) | 7. James LeBeau (COLA) |
| 2. Daren Callahan (LIB) | 8. Alice Noble-Allgire (LAW) |
| 3. Jon Davey (ASA) | 9. Daniel Overturf (MCMA) |
| 4. Joan Davis (ASA) | 10. Karl Williard (AG) |
| 5. David Gibson (COS) | 11. Kevin Wise (COEHS) (appointed 7/15/12) |
| 6. Jason Greene (BUS) | 12. Andrew Wood (COS) (appointed 7/15/12) |

Hearings

The JRB received two tenure and promotion (T&P) grievances in 2012 and heard a non-T&P case carried over from 2011. For each case, the JRB followed the Grievance Procedure for Faculty (GPF) in selecting a five-member hearing panel and two alternates by random drawing and having the respective panels hear the grievances.

Results of the Hearings

The results of the grievances heard in 2012 and the Chancellor's response to a promotion case pending at the time of the JRB's 2011 report were as follows:

2011 Promotion Grievance – unanimous decision by the JRB in favor of the grievant, recommending that the dean's recommendation of promotion should stand. The Chancellor rejected the JRB's decision.

2011 Non-T&P Grievance – split decision by the JRB, 4-1, in favor of the administration. The Chancellor accepted the JRB's decision.

2012 T&P Grievance No. 1 – unanimous decision by the JRB in favor of the administration. The Chancellor accepted the JRB's decision.

2012 T&P Grievance No. 2 – unanimous decision by the JRB in favor of the grievant, recommending that T&P be granted. The Chancellor agreed that a procedural violation occurred in the denial of promotion, but concluded that no violation occurred in the denial of tenure. The Chancellor directed the Provost to rewrite the letter denying promotion to provide a detailed analysis regarding reasons for the denial.

Concerns

1. Timely Hearings

The JRB continues to have difficulty scheduling timely hearings, particularly with respect to T&P grievances. The GPF requires the JRB to conduct a hearing "as promptly as possible, but shall begin no later than 15 working days after receipt of the appeal or charge, unless the panel extends this deadline for good cause shown . . ." T&P grievances are received in late April, typically leaving fewer than 15 working days in the Spring Semester. Although class days during the summer may be considered a "working day" by mutual agreement of all parties, it is

even more difficult to coordinate schedules at that time. It has helped to have the JRB select two alternates for each panel. Nonetheless, because of scheduling difficulties, the T&P grievances filed in 2012 ultimately were not heard until late July and early October, respectively.

2. Treatment of JRB Panel Decisions

Deference. The Chancellor's rejection of both JRB reports favoring grievants has raised concerns about whether the JRB's decisions are being given appropriate deference. The GPF provides that "[a] decision by a 5-member JRB panel shall replace the decision of the administrator that is being appealed. The chancellor or appropriate administrator shall treat the JRB panel decision in the same manner as s/he treats similar decisions of the administrator. . . ." The Chancellor's treatment of the recent JRB decisions raises questions about whether the Chancellor and the JRB might have differing interpretations of this provision or whether the difference of opinion is only with respect to one or more of the other issues discussed below.

Remedies. There is a concern about the appropriate remedies when the JRB finds a procedural violation in a T&P grievance. The GPF provides that the JRB's panel decision may include one of three remedies: "a) dismiss the grievance because there was no violation or the procedural violation(s) was (were) deemed trivial; b) procedural violation(s) was (were) substantial enough to warrant additional time to work toward promotion and tenure; c) procedural violation(s) was (were) substantial enough to warrant promotion and tenure." As noted above, the Chancellor agreed that a procedural violation occurred in one of the 2012 T&P grievances, but found it inappropriate to grant promotion based upon a procedural error. Some members of the JRB similarly have questioned whether it is appropriate for the JRB to recommend granting promotion or tenure, particularly when the JRB has no authority to make a substantive review of a candidate's dossier. As a practical matter, however, that is the only remedy available to the JRB unless the procedural violation is one that can be remedied by giving the candidate additional time to work toward T&P. In contrast, the Chancellor directed the Provost to rewrite the letter to provide the requisite detail – which is a remedy not available to the JRB under the GPF.

Sufficiency of letters denying promotion The JRB has concerns about the sufficiency of some of the explanations given in letters recommending denial of T&P. The Promotion Policies and Procedures for Faculty provide that "[o]nce the faculty has made its evaluation and recommendations, the results should be reversed only for reasons which are stated in detail." As explained in a decision by Arbitrator Hayford, and acknowledged by the Chancellor, the purpose of this requirement is to ensure that (1) the administrator made a separate and independent evaluation of the credentials of each candidate and (2) the decision was made in a deliberate and thoughtful manner and founded on a full and fair consideration of all of the factors pertinent to that decision. In both JRB decisions favoring the grievants, the JRB found this requirement had not been met because the letters did not explain how the administrator had weighed and balanced the relevant factors or identified the key findings that led to the ultimate decision. The Chancellor rejected the JRB's finding in the 2011 promotion matter, concluding that the denial letter was sufficiently detailed. In the 2012 T&P matter, the Chancellor agreed that a more detailed explanation should have been provided, stating that "such details are important in the denial of promotion cases specifically so that a Faculty member may correct any deficiencies in his/her record for future promotion considerations." As stated above, however, the Chancellor disagreed with the JRB's recommended remedy of granting promotion.

Sufficiency of letters denying tenure. The Chancellor noted that the Tenure Policies and Procedures have no requirement that administrators state reasons in detail when overturning a departmental recommendation in favor of a candidate. Instead, the document provides that "[a] negative tenure vote by a majority of the tenured faculty of a basic academic unit cannot be overruled except in cases of failure to observe the standards or of demonstrated discrimination." Members of the JRB find it troubling that a recommendation for denial of tenure would require anything less than the detailed analysis required for a denial of a promotion.

Pre-tenure reviews. In the 2012 T&P matter, the Chancellor and the JRB panel disagreed as to whether a procedural violation occurred when the dean recommended denying T&P notwithstanding the candidate's five years of consistently positive annual reviews from a prior dean. The JRB panel concluded that "[l]ack of transparency in the process and unexplained inconsistency between annual reviews and the dean's and respondent's tenure and promotion recommendations constitute a procedural error." The Chancellor, however, considered the differing opinions of the two deans to be a substantive, rather than procedural, matter and beyond the purview of the JRB. She further stated that "a review indicating progress toward tenure is not a guarantee of tenure. If so, then the extensive dossier preparation and review process would not be necessary." She stated that the annual reviews are to identify potential issues, but "the end result of the dossier is reviewed in its entirety by all parties."

Factual errors. In both T&P matters this year, the JRB panels expressed concern about factual errors in letters recommending denial of T&P. The panels ultimately concluded that the errors were not serious enough to constitute procedural errors. As one panel observed, however, the errors "suggest a careless and casual review of the dossier which belies the important and serious nature of the promotion and tenure process."

Recommendations

To address the foregoing concerns, the JRB makes the following recommendations:

1. That the Faculty Senate appoint a task force to review the foregoing concerns and collaborate with members of the administration to clarify and/or amend the GBF and perhaps the Promotion and Tenure Policies to better reflect the respective roles and responsibilities of JRB and administration in the T&P process.
2. That the administration provide training for all persons writing T&P recommendations and reports – including administrative reviews from the chairs and deans to the Provost – to ensure that such documents contain a correct statement of facts as well as a sufficiently detailed analysis consistent with the standards set forth by Arbitrator Hayford.
3. That the JRB continue to seek ways to expedite the scheduling of grievance hearings.