**Faculty Caucus Minutes**

**Wednesday, October 25, 2017**

**Approved**

***Call to Order***

Senate Chairperson Susan Kalter called the meeting to order.

***Roll Call***

Senate Secretary Martha Horst called the roll and declared a quorum.

***Advisory Item:***

***10.10.17.03 Board of Trustee Report-Promotion-Tenure-Sabbatical FY18 Final***

Senator Kalter: The first thing on the agenda is an advisory item that was actually on last time's agenda, but because there was an outage of Office 365 that day, I had not been able to print out the amended agenda, so I just wanted to make sure to put it on this agenda and just ask if anybody had any comments about the promotion and tenure sabbatical report and just give a congratulations to the four people here who either got promoted or tenured or both; Senators Blum, Enriquez, Horst, and Martinez. Anybody have any other questions or observations about that report?

Senator Horst: At one point under the tenured section it says that some tenure-track faculty resign or are not reappointed. Would it be possible to find out the statistics on that in future reports the number of people who aren't reappointed?

Senator Kalter: Sam, I believe that that's a different report, isn't it, that we do a non-reappointment report?

Dr. Catanzaro: That's a report from me to the colleges, to URC.

Senator Horst: I see.

Senator Kalter: I feel like I've seen it in the Senate, but I can't remember exactly where. I think it comes to Faculty Caucus in some form, sort of just a final list of promotions and tenures for a particular year with a non-reappointment line.

Dr. Catanzaro: Honestly, I'm not remembering if that report comes, but if you remember seeing it, then it probably came from URC.

Senator Kalter: Yeah, we'll try to dig up a copy of a past year's one and see how many years we've missed, but Dr. Horvath has it.

Dr. Horvath: So in the ASPT policy it says that the URC will forward that report as part of its annual report to the Faculty Caucus.

Senator Kalter: Okay. I feel like it comes out of the Provost office, though, somehow, but maybe I'm wrong about that. But, anyway, we'll track it down and get any past years that we might have missed, if there are any. All right. Anything else about the Sabbatical, Promotion, Tenure Report? And the other reason, by the way, it went on the last agenda, was because the Board of Trustees meeting has already happened, so we like to get those things as they're headed to the Board, rather than afterwards.

***Action items:***

***Reinstatement Committee Election (1 Faculty)****Nancy Novotny, MCN, 2017-2018 (replacement for Kim Astroth)*

***Academic Freedom, Ethics, and Grievance Committee Election (1 Faculty)***

*Joseph Zompetti, COM, 2017-2018 (replacement for Hyun-Sook Kang)*

***Honors Council (1 Faculty)***

*Julie Campbell, PSY, 2017-2018*

***Academic Planning Committee Member Confirmation***

*Miranda Lin, TCH, 2017-2019*

Motion by Senator Haugo, seconded by Senator Nichols, to elect faculty to all four committees as a slate. The motion was unanimously approved.

***Information items:  
09.08.17.01 Proposed New ASPT Disciplinary Articles  
10.02.17.03 AAUP Report: Recommended Institutional Regulations on Academic Freedom and Tenure 2014  
10.02.17.04 AAUP Report: Statement on Procedural Standards in Faculty Dismissal Proceedings  
10.02.17.05 AAUP Report: Termination- Discipline 2004  
10.24.17.01 Email POL suggestions to Proposed ASPT Disciplinary Articles  
10.24.17.02 POL Suggestions to proposed ASPT disciplinary articles***

Senator Kalter: We'll move to the main topic of the night, which is our final disciplinary article to review, which is the dismissal article. We have, by the way, but I think we should save this for the end of the meeting, we have three comments from, I believe, two DFSCs… Actually, a DFSC, a DFSC/department, and then a CFSC, but I'm going to save that until the very end so that we can get through Article XV and proposed Article XVII, section L. So let's start with Article XV, section A. This is on page 16. Let's just start with any comments or questions about the general provisions part of this article.

Senator Horst: Ah, yeah, I had a question about number 2, which discussed the adequate causes and it gives language under a, b, c, and d, and my question is that there's specific language that's in the ISU Constitution regarding what constitutes cause for dismissal, and that language is then echoed in our tenure policy, and the language comes straight from the AAUP, and I'm wondering what thoughts your committee had as you were deciding not to go with that language that comes from the Constitution. You sort of expanded it in various ways by saying repeated, extraordinary, and egregious violations. Why not just stick with the straight sentence that comes from the Constitution?

Dr. Dean: Do you have that sentence that you could read for…

Senator Horst: I do. I do. This is in Section 4, Article 3, and it says cause for dismissal shall be related directly and substantially to the fitness of faculty members in their professional capacity as teachers or researchers and may be deemed to exist when faculty members can no longer be relied upon to perform their university duties and functions in a manner consonant with professional standards, and that's coming straight out of the AAUP language. And the language in the tenure policy is essentially the same under 3.2.6. In other words, it's very limited.

Dr. Horvath: We thought it was both too limited and too vague, and so we wanted to be clearer about the conditions that warranted dismissal. We also wanted to make clearer a distinction between no longer able to perform your duties up to professional standards because of say something like a health-related issue or, you know, you've reached the end of your career, your health isn't great, dementia is setting in, but you refuse to retire. Again, the University needs to have a way of encouraging retirement, but we don't think that that should be considered a dismissal. We thought that the language in the Constitution, we thought the AAUP language, they were both too vague and didn't make the kind of distinctions we thought were necessary to make.

Dr. Catanzaro: And I would further note that the language in the current ASPT policy is retained in article XII, the General Considerations article, so I think as the members of the committee have noted, this sort of elaborates on the context under which we might start to think about someone exhibiting a lack of fitness to perform, I’m reading, to continue to perform in a faculty member's professional capacity as a teacher or researcher, failure to perform assigned duties in a manner consonant with professional standards or malfeasance. So I think the idea is that this is variations on the themes in article XII.

Senator Horst: Article XII of the ASPT.

Dr. Catanzaro: Article XII of the proposed…

Senator Horst: ASPT.

Dr. Catanzaro: Yeah.

Senator Horst: Yeah, I'm just, I'm just very uncomfortable, you know, just even the clause "such as." I'm just very uncomfortable opening up any sort of language past what the very limited parameters are given in the Constitution that's coming straight out of the AAUP.

Senator Kalter: And I just want to say: this Senate Chair is not going to preside over an expansion of cause from our Constitution. So I had the same concerns, except that they are based on what's already in our ASPT book, existing Article XI, which is Termination of Appointment of Probationary and Tenured Faculty, gives very explicit, very clear and consistent with our ISU Constitution, five reasons why people can be terminated or dismissed: lack of fitness to continue to perform in the faculty member's professional capacity as a teacher or a researcher is the first, failure to perform assigned duties in a manner consonant with professional standards is the second, malfeasance is the third, and the fourth and fifth are demonstrable university financial exigency or program termination. So I think that what we need to do is actually eliminate in number 2 the phrase, "for adequate causes such as," and not conflate reasons for, reasons leading up to, with cause. The word “cause” has a very specific connotation when it comes to termination that we should not lose. We're not going to and we cannot rewrite the adequate cause clause, so to speak.

So what I would suggest is that we eliminate that and say, a disciplinary dismissal of a faculty member may be considered: And then say, a., “as a next step in the progressive disciplinary process, etc.,” but then add to the end of that little mini-sentence something like, “and when lack of fitness or failure to perform are an issue” or something like “and when fitness or performance in a manner consonant,” you know, etc., “are in question,” and then continue to do that every single time. It looks like in 2.b there's a reference to malfeasance, which makes that one not, you don't really need to mess with it right now. The next one, c., we could say something like “implying malfeasance,” and in d. something like “such that the harm or threat implies malfeasance” so that it's very, very clearly connected to already existing language, which I think has served well for several decades. So it looks like the URC is in agreement with that, and I see you nodding your heads, at least some of you are nodding your heads.

Dr. Catanzaro: Friendly suggestion, if not an amendment. Would it work to use phrasing such as the following phrasing: “And when the adequate cause is listed in Article XII, are at issue, or something like that.”

Senator Kalter: I believe that Article XI is the determining article.

Dr. Catanzaro: Well, in the new proposed policies does it become XII? Or it might become XI. Well in the General Considerations article in the proposed packet we have the language of fitness, etc.

Senator Kalter: I may have already said this at a very early meeting that we never got a revised article XI, and that that is likely needed to be at least slightly revised, so what you have is, you know, a general thing about termination, but then this is a disciplinary section and I think this jumps ahead to the discussion that Politics and Government wants us to have, the Department of Politics and Government, about the difference between termination in general and termination for disciplinary reasons. So I would say we're talking right now about existing article XI, and if Article XII happens to repeat those definitions, that's fine, but we should go to the place where it's actually first defined, if that makes sense. But I think that your general point is right that putting a cross reference, a specific reference to one of those articles, is a very good idea so that we know where that definition, where we should go for that definition.

Dr. Ellerton: Yeah, I mean I agree. I think it's most important that the document is cross referenced as fully as possible so that there is consistent language, but also I think it's important that, and some more of this might come up in response to the Department of Politics and Government, that it needs to be clear that dismissal is only for… as almost, if there is any one word that implies that there can be dismissal other than for something that's performance related, and I think it's got to be very transparent that there are other things that could lead to dismissal, even if… I mean, we can't list them all, we don't… that was never the intent, but to make that broad enough that it catches. So, oh no, this is all right, that can't go through as dismissal. I just think you need to have the right language there. We need to be careful that we don't imply it's only performance related.

Senator Kalter: Yes. One thing that also might help, I have another note on A where we have number 4 saying the standard for any dismissal is that of adequate cause. My suggestion there is that we might wish to move that to be A.2, rather than A.4, and that that's a good place to put the cross reference at the end of that first sentence, that then also talks about who has the burden of proof and that kind of thing. Are there other comments or observations about A?

Senator Horst: I would just like to say, you know, one more time, I think the sentence that's in our Constitution is very clear, and I think it should be in article A, and then you can relate everything back to that, but any sort of, you know, any sort of language that we start crafting, this such as, really made me upset, because it really seemed to, just those two little words were really opening up possibilities that I don't think AAUP or our Constitution are addressing, so I would encourage us to include the specific language that's in Article 3, Section 4.B.1.

Senator Kalter: Thank you. Are you saying that we want to quote that or simply reference it?

Senator Horst: I think we should quote it and then, like you're saying, you can have this list, but everything should be…

Senator Kalter: Consistent.

Senator Horst: …consistent with that.

Senator Kalter: Okay. Thank you. Other things about A? Anybody have any observations about A?

Dr. Dean: Yes. I would be interested to know whether any other Senators have thoughts on this, because from my view I actually find the proposed article language more clear than what is specified in our Constitution. For example, when I look at what we're proposing is Article XV.A.2, I can see very clearly it's the next step in a disciplinary process if other recourses of disciplinary action have been exhausted without effect. I can understand what that is. “If upon notification from a law enforcement or judiciary body or other entity external to the University,” “substantiated finding of malfeasance” that's very concrete. “c., upon notification of a substantiated finding of repeated, extraordinary, or egregious violation imposed on a faculty member by an office or entity,” etc., etc. I get it, very clear, concrete. And the same thing with d., “an extraordinary or egregious circumstance involving harm or credible threat of imminent harm to the University, including,” and then all the people and entities that that might include. Those are far more explicit to me than fitness to perform or a manner consonant with professional standards. I actually personally find that language in the Constitution far more squishy and vague and difficult to prove or disprove whether I'm fit or not fit or am I performing in consonant with standards or not, but I think the triggers we're proposing, the line is extremely clear of what cannot be crossed.

Dr. Ellerton: I think too that we should be reminded that the Legal office also scrutinized the document and part of the scrutiny, I assume, would be, and that may be an assumption, that what is proposed is consistent with the Constitution. Often the Constitution is necessarily terse, it has to be, and it is Senate's role, among other things, to interpret and apply that Constitution, so I would see this as a way of trying to interpret for practical purposes how that Constitution should be, you know, made reference to and applied.

Senator Kalter: Any other comments about A?

Senator Blum: Does the "such as" as it is now, all right, “such as” seems like a, b, c, d, and other things. That's what that lang-… To me, that's what that “such as” means, okay, so by having “such as,” I mean I understand that the expression that a, b, c, d, have a certain clarity or specificness to them, but by adding the “such as” language, it seems like it's not just a, b, c, d, but these are in fact exemplars of possibilities rather than the actual possibilities. I'm going to throw that out and let people respond to that.

Dr. Ellerton: Just following on from, I mean I agree that as soon as you lose “such as” you do start to look for and think about other things, but maybe a solution that could be looked at would be to quote the phrase in the Constitution and then to state specifically that for the purposes of describing or laying out procedures by which the University should follow dismissal procedures, that the following and then the phrase that you said, disciplinary dismissal of a faculty member may be considered, and then your list, the list that's there, but that it be specified that this is an interpretation of the Constitution to facilitate describing the processes that the University will follow.

Senator Ferrence: So what Dr. Ellerton said is more or less what I was capturing from Senator Blum, and he used the term exemplar, and it strikes me sitting here like the main discussion is about the “such as,” not so much the four bullet points, and would it be as simple as taking the language from the Constitution and placing it here, as we were discussing, and then instead of ending that statement with a “such as,” then once you said the Constitutional sentence, say as exemplified by these four cases, and then you haven't closed the door for other cases necessarily, but you basically said, well here's four specific examples that speak back to the Constitution, so you haven't ruled out that you might not be capturing one, but you haven't altered the Constitution in any way. You just focused the points.

Senator Kalter: It is, I think, almost that simple. I don't think anybody here is suggesting that a, b, c, d, should be gotten rid of, but qualified as needing to be something leading to a demonstration of lack of fitness or failure to perform or malfeasance, and that the word adequate cause in the first sentence of 2 is linguistically confusing and that should also be eliminated. But I can't agree, Senator Ferrence, that we actually want to keep that door open. Dismissal is extremely serious, and it has happened here, as far as we know, maybe once, maybe twice, and I think that lack of fitness is vague, because it covers a lot, and failure to perform is vague, because it covers a lot. So I'm not sure whether we want to then say that let's just crack the door open as wide as we can for anything else that any President or Provost, however reputable they may be… Because we have had very recently, you know, somebody who I think we could all be afraid of, not the present President, but one before him. So I think we really want to be careful about cracking that door open. But I think most of the article what we're saying is that most of it is fine, but we're tweaking so that it all funnels into existing language.

All right, if there are no more observations about A, let's move on to B, which is mislabeled D, but it's the thing on page 16 below A. Let's start with B.1 and 2. Any observations about those on page 16 and half of 17? All right, I just have a couple very minor. In #1 I'm wondering if FRC should be included in the list of people extending deadlines. Maybe I already said that last time. I'm wondering in #2 in that first paragraph if we should say “sanctions and/or dismissal in terms of continued problems that have not been remediated,” and then also there adding “suggesting lack of fitness or failure to perform,” you know, those kinds of things. That was the stuff on that page. There's a missing “an” in b., so “when appropriate the dean, provost, or an administrative designee.” That's a very minor one. And then the last one I had was I believe in e. where it's saying if a mutual agreement does not result, here's what the DFSC does, and about four lines down it says the notification will include, and I think that AAUP recommends something that they call a statement of the grounds for cause for dismissal. We have a description of the alleged misconduct, which I don't think is quite the same thing. So I would suggest maybe adding "a statement of the grounds for cause for dismissal," and then saying “a description of the alleged misconduct,” etc., and in that same sentence where it says the evidence supporting the charges, I'm not sure that charges has been mentioned, so there's no antecedent for it. So I wrote down “what charges?” So we may need to just tweak that language just a little bit, and that's all I had for that one. Does anybody else see anything in B.1 and 2? All right. If not, let's move on to B.3 Dismissals that might be initiated by the Provost, and this is mostly on page 17 and goes over to 18.

Dr. Catanzaro: I'm sorry, I was waiting to see if there are any other comments. I had a few reactions to the list that you just went through, if I might. I think when we wrote this, we did not use the phrase "may result in sanction or dismissal." That was one of your suggestions to reinsert same, because this is the dismissal article.

Senator Kalter: Actually, you do have it in there. What I was referring to is on the very bottom of page 16 about three lines from the bottom. It's the end of the first sentence under 2.

Dr. Catanzaro: Yes.

Senator Kalter: Have not been remediated through sanctions or suspensions. Do you see that?

Dr. Catanzaro: Yes.

Senator Kalter: So that's where I was suggesting the “and/or.” Is that what you were tracking?

Dr. Catanzaro: In that case, I would suggest that “or” implies the possibility of “and,” but I'm… Well thank you.

Dr. Horvath: It's the inclusive “or,” obviously.

Dr. Catanzaro: Let the record show that Professor Horvath just said, like a good philosopher, which is the nicest thing anyone said to me all day.

Senator Kalter: We're sorry, Sam.

Dr. Catanzaro: Thank you.

Senator Kalter: Did you have other…

Dr. Catanzaro: Not that I can recall. That's quite all right. We'll talk about it later.

Senator Kalter: We'll ask Bruce to do an “and, or, and/or” search and see… The whole document. Or I can do it. No, I won't do that. All right. So we're moving on. I guess we were on… We were about to go to B.3. Anybody have anything on B.3? The only things I think I have on there are repeating things that we've already said, pulling the boiler plate forward. Anybody else have anything? Let's go to 4, B.4, The Commencement of Formal Proceedings by the CFSC. Senator Horst. She did not raise her hand, but I heard her sighing.

Senator Horst: I didn't even raise my hand. I'm just going to again bring up the problem that, one, we're not considering whether or not there's a recusal on the CFSC, if it can be requested by the person that's being charged with dismissal or somebody from the CFSC would recuse themselves and would they be replaced? I was reading in the AAUP documents about there should be a system for replacing people on the hearing. What if, you know, we have six people on the CFSC, what if somebody recuses themselves? You could get down to very small numbers and so do we need to think about maybe having a replacement system if somebody from the CFSC can't serve, so those are the points I'd like to bring up.

Dr. Dean: I would like to respond to that and just to note that in developing the proposed articles that we're reviewing, an array of models and information sources and best practices went into consideration, so although we did review and draw from AAUP, it was our belief not to wholeheartedly try to model them explicitly. So AAUP informs what we did, but we do not, you know… I notice that several times the points that you're making, Senator Horst, are well AAUP says this, why aren't we doing that, and I just want to say I don't think we need to wholeheartedly… We need to create what's right for us here at ISU, not necessarily taking across the board what AAUP's phrasing may be. But with response to your specific question, I think given that this is within the ASPT document or proposed to be within the ASPT document, any such recusals or replacements should parallel whatever the processes are for promotion and tenure review. I believe there is a process if you need to ask somebody to recuse themselves off of that type of a review, but I don't think we have a process for replacement. No, Sam is shaking, because I always look to you, Sam, because I know that if I woke you up at 3:30 a.m. in the morning and asked you a question about ASPT, you would know. I just know that. I just know that. Okay, so not funny, no laughs. Boy, this here is a rough crowd, I'm telling you. Gosh, okay.

Senator Kalter: I laughed.

Dr. Dean: So yes, I agree with you on that and maybe we can look to that for the language to write that in there, because you're absolutely right. If there's some type of conflict, we have that already in place for promotion and tenure reviews and the like and it should also be in here.

Senator Horst: I don't want to quote the College of Arts and Sciences bylaws, but I believe at one point they had a system that if you were up for tenure you could ask somebody to not review your case and so there is that tradition, even in the college level, for the ASPT process, which then reflects the AAUP process. And, you know, I don't feel comfortable just taking it down to the college level and saying whatever the colleges wanted to decide on this is what we should do.

Senator Kalter: Senator Horst, it seems like, if I'm understanding you correctly, you're arguing CFSC has to have a certain critical mass of numbers in a dismissal case to make a decision that seems appropriate and thoroughly shared governance, right? In other words, if people have to recuse themselves off a small CFSC, shouldn't there be a way to make sure that at least five people are making that decision, or at least whatever number might be appropriate. Is that what I'm hearing?

Senator Horst: That's part of it. And then if you actually allow the person to request that somebody be recused of like, you know, I walk in there and there's my ex-boyfriend, and I don't want him to be on the dismissal hearing, something like that, and that's one process we could consider, then you're getting down to even smaller numbers, so the AAUP process allows for people to be replaced, which we don't do on CFSC's ever, so I appreciate that the culture we don't have replacement CFSC people, but nonetheless, it seems as if we really need to consider whether or not, you know, could the dean appoint somebody if the numbers got below a quorum?

Senator Kalter: I would maybe say more like could the Caucus elect somebody or could the college elect somebody or something like that. Yeah, given that you wouldn't want a dean with that much power, especially after the thing is already in process.

Senator Horst: And I'll bring up the College of Fine Arts as an example, because if you start, we don't have a broad spectrum of departments. We have two, two, and two. Right? Music, and so if somebody from Music was going up for a dismissal case, then the two people from Music might automatically recuse themselves, or they might consider that, and so we get down to very small numbers quickly in a college, a CFSC like that, where the representation of departments is very small.

Dr. Horvath: Well, and I'll just point out, though we haven't talked about it yet, there are two colleges where this will be a bigger problem; Mennonite and Milner. Right? And we've got provisions in here that say they need to adjust these policies in ways that make sense with the way they're organized, but, again, the problem you just cited will be even more severe for Milner and Mennonite where the DFSC and the CFSC, I mean the distinction between the two is far different than it is in Arts and Sciences or CAST.

Senator Kalter: Do others want to weigh in on how we might solve this problem or whether you think it's a problem?

Senator Blum: I have a question. Yes, I mean currently if you ask someone to recuse, I mean is that a voluntary act, I mean like it's a request versus a requirement. So like you make a request that faculty A be recused. Do they have to? Or, what is the current practice around that?

Senator Horst: I could talk to Nancy Lind. I'm not from the College of Arts and Sciences, so I could look into, further, them the processes that they have, but I do know somebody who knows their bylaws pretty well.

Senator Kalter: As far as I know, Senator Blum, currently we don't have policies that force recusal. I mean we have policies like the nepotism policies that do force recusal in that sense, but in terms of this kind of thing, like the example that Senator Horst brought up, “you're my ex-boyfriend,” I think most of the other policies have voluntary recusal unless it has to do with nepotism or a family relationship or whatever. What Senator Horst is bringing up, though, is that AAUP specifically in their template for dismissal proceedings recommends that you be able to, both sides actually, not just the accused, so to speak, but the administration, be able to pull people off of a committee if they find a conflict of interest of some sort, because it's such a serious thing to dismiss somebody. So I'm pretty sure, I don't know if Dr. Catanzaro has anything more to say about that, but am I right that, is that sounding right that we don't have policies right now that force recusal, except for the family relations one?

Dr. Catanzaro: Yes. The Code of Ethics does state that faculty, well the entire University community, avoid conflict of interest in commitment, and when the question comes up and is brought to me, I generally encourage people to err on the side of caution and consider that the appearance of a conflict of interest can be as threatening to the integrity of the process as a real one, but we can make that distinction.

Senator Kalter: Thank you for doing that. Can I fairly say that not everybody necessarily does what you advise?

Dr. Catanzaro: It's rare, but I guess it happens.

(Laughter)

Senator Kalter: Right. Okay.

Dr. Horvath: At least in these matters. There are other matters in which… I mean, I don't want to leave people with the impression that we didn't think about or consider these things. I mean, we did. And I think our idea was the standard procedures for recusal that already appear in our ASPT documents would apply. What we wanted to avoid, the balance we want to avoid, we want this procedure to be standard. We don't want… I mean, again, it's going to be rarely, if ever, used, but we don't want the idea that you reconstitute the CFSC for dismissal. You use the DFSC. You don't constitute a new DFSC or cherry pick, running the risk of both sides cherry picking members for a special ad hoc CFSC for the dismissal procedure. It should be the CFSC that decides, and whatever other standard recusal rules in the entire process, right, so ASPT process, should apply here as well.

Senator Kalter: And then the theory being that the FRC and AFEGC would be the places to go to complain about…

Dr. Horvath: That is correct.

Senator Kalter: …problems. Okay.

Dr. Horvath: That is correct.

Dr. Dean: Yes. I was going to add to that that I believe that's also exactly why we have parameters to request a recusal, but not to initiate a replacement, because if you think through the scenario would be professor so and so is up for potential dismissal, and then we would be asking the entire college to vote on temporary replacements for who would cast that vote or decide that. That's just an awful place to be in, and the inverse is just untenable also to think that the dean could… We don't do that. The dean does not appoint to these committees. But along the lines of what Professor Horvath was saying regarding cherry picking the committees, that was one of the initial reasons when our committee, URC, went back to scratch to look through this again, and the version that we had received back from this body that we were reacting to with this proposal, AFEGC factored heavily into these processes, and if you think about it within that process, there is a chair and a vice chair who hold tremendous influence in deciding who's up for term to be on a specific case, which can lead to inconsistencies in bodies that would be reviewing disciplinary cases such as this, so we really wanted to go back to this standardized route. Everyone in the college or the department has voted on the individuals that would be holding responsibility for these actions with all due seriousness in the same way that we elect them to hold responsibilities for our promotion and tenure and the like.

Senator Kalter: If you know of instances where that issue has been a problem on AFEGC, could you please let us know?

Dr. Dean: Oh, I'm not aware of any specifically.

Senator Kalter: Okay. Hopefully the people who are chair and vice chair are choosing people in ethical ways, and so I would hate to hear that that's not…

Dr. Dean: Well, I am aware of instances where committees were formed and individuals were able to… They were disbanded for unknown reasons, and some of this may be factoring into that as well.

Senator Kalter: Got you.

Dr. Dean: Sure.

Senator Kalter: Anyone else on number 4, B.4?

Senator Horst: Sorry. I did. Actually in my notes, I did pull out the CAS bylaws, so it does say in the CAS bylaws that “However, request to have a CFSC member recused can be made by the applicant or by the chair director, DFSC, CFSC, of the department or school. Persons making such a request must provide the dean a brief written explanation.” So, according to that logic, if you were getting dismissed by CAS, you would have the right to have a recusal, and I'm just asking that that… I just don't think we want to have inconsistent policies regarding this by the college.

Dr. Horvath: Again, the URC thought it was important that these procedures be standard and universal across the university and differ as little as possible, if at all, between colleges, so if CAS, I was unaware that that was in the CAS bylaws. That seems like that's a problem, right, that their CFSC rules allow that, if other colleges don't allow that, I think we do have an issue here, because just to be clear, the URC would like the same recusal policy to apply across the board with respect to dismissal. So if the petitioner can request a recusal at CAS, then we should either go across the board with that or not recognize that part of the CAS bylaws, which has its own problems. So we just think it should be the same across colleges as much as possible. We recognize that Milner and Mennonite are going to have to differ, and we said specifically in here that was okay, right, that we understood that that was going to be required, but for the other colleges, the feeling of the URC is that the procedures should be the same regardless of colleges.

Senator Kalter: I do think, Dr. Horvath, that we can, regardless of what we do, we can take care of that on the URC level in the sense that URC when it's directing its CFSCs about how to implement their college level policies can lay out things that cannot be not uniform in them, so we may need to put it in here, but it can also be through a procedure as well.

Dr. Horvath: Again, I just wanted to articulate that that was our feeling was that it needed to be the same across colleges with the exception of Mennonite and Milner, which are structurally different.

Dr. Ellerton: Just briefly, the other aim was to be consistent in the document for Sanctions, Suspensions, and Dismissals in terms of reference to DFSC, CFSC, so that what applies in one section was assumed across the board. It goes without saying that that is assumed, but as soon as you put something special into just Suspensions, then it looks like that's being treated differently. So it was implied that that is the college level and the school and the department level DFSCs, etc., it was important that that treatment was consistent right through all of those disciplinary processes.

Senator Blum: Yeah. I just want to say that I agree with everything you're saying about the consistency and I think that, I mean it does, I would have to go back and look at the other documents to understand the recusal process, all right, but it does seem that it's not completely clear to me that there is, at least from the way this is currently, that that recusal could take place. Right? And it may could, and it may, that's really more, and so I like the idea of it being consistent for all processes, and so their process of recusal, but I would encourage it to actually be clear that that is available to everyone, and I think that if it is and say someone wrote a written letter, okay, requesting someone and then that was not considered, right, and then it goes to the appellate right, it goes to AFEGC, then that becomes documentation as a rationale to address that, but I'm a little concerned without that clarity that that process could potentially fall through the cracks somewhere.

Dr. Catanzaro: I just want to clarify if individuals are interested in that language from the College of Arts and Sciences, I don't know how common this is across other colleges, there are two different documents. One is the ASPT standards and one is the bylaws and the language about recusal that was brought up as actually in the CFSC ASPT document. So if you're looking in the bylaws, you might not find it. I just want to make sure people are clear about that.

Senator Kalter: That's a good point. Yeah. Thank you. I only have one little thing about 4, and I know it's not always a good idea to just repeat something that's in a different article, but given how serious dismissal is, I wonder if at the end of 4.a. we might want to have a sentence that says “faculty members' right to seek advice and counsel must be honored.” We stated in, it looks like XV.B.5.b, but I wondered if we might want to have it there just to make sure that as people are reading through the procedures that they realize that people could bring their lawyers and that kind of thing. Anybody else have anything about 4?

All right, if not, let's move to section B.5, which is on 19 and half of 20, Hearings by the CFSC. I'm going to start us out. I have a couple on page 19. I know that I read this in AAUP, but could you remind us in d, 5.d, why the Provost is able to attend the hearing as an observer. I don’t even know if AAUP gave a rationale for that, but I'm just wondering if you found one or talked about one and articulated it to yourselves. There's also, I think, as in e., you know, a member of the Faculty Caucus will also attend as an observer, which is a little more obvious why that's the case. And what I have written in e. is “or vote to elect the observer? or know what is even going on?” I'm not sure exactly what I meant by that, but did you talk about that at all?

Dr. Horvath: We did talk about it at length, and actually Sam's the one that made the strongest arguments for the Provost observer, so maybe, do you want to, well in the end it's the Provost who's… In the end it's the Provost who's going to be responsible for making the final decision, in the end, and for enforcing whatever the sanction is or punishment in the end, and so it seems like the Provost should know what's going on all along, right?

Senator Kalter: In some detail.

Dr. Horvath: In some detail. Again, we didn't expect perhaps the Provost to attend all of these things, but maybe the Provost would assign Sam to attend all of these things or some Sam designee, right, but, again, in the end the Provost is going to be enforcing these and imposing them and so the Provost should know what's going on.

Senator Kalter: Got you. I just realized also what I meant, by the way, was that the second line in e. says members of Faculty Caucus from the faculty member's college may not serve as the elected observer, which is awesome, and then I was wondering, should we even let that person in on the vote on who to send. Right? Do they get to know that this is going on, and I would lean towards no, but you know that's something we can discuss.

Dr. Catanzaro: I think there's also sort of a symmetry, getting back to d., if the Provost is the referring party and is part of the proceedings and… I mean, it's unlikely one case will be… two cases is even less likely, but you know then there's another case that comes through the other route and then you know in some sense the final decision has had a slightly different process that might not work out as well as, you know like just procedurally. Right?

Senator Kalter: So it's a norming presence in a certain way?

Dr. Catanzaro: Yeah.

Senator Kalter: In a sense?

Dr. Catanzaro: Nice way to put it.

Senator Kalter: One other thing that I had on that page has to do with k., and this came out of discussions about AFEGC, but may be pertinent here. In the second sentence of k. it says the faculty member and the referring parties may suggest questions to the CFSC, and I wrote “in writing.” I'm wondering if that's an issue, because, in other words, what we were talking about in the AFEGC summer group was, do you really want a Judge Judy kind of phenomenon where the parties are trying to ask each other questions across the desk, so to speak, rather than filtering all questions through the presiding body. Is that something that you think would be a good idea to clarify that while they may suggest questions to the CFSC, it should be in writing, and even that maybe the CFSC gets to decide I'm not going to ask that question because it's been asked and answered or does it need to be…?

Dr. Ellerton: Yeah. That was the intent that it be submitted in writing, because it's implied by the phrase, retain the right to determine whether and how a question is asked. That would be difficult to do if it wasn't in writing. So that could be a simple clarification.

Senator Kalter: Okay. Sounds good. I don't want to dominate. Does anybody else have stuff about 5? I got a couple more. So in m. where we find, where is it, third line down in m., “on which it finds grounds or no grounds for dismissal,” I'm wondering if we should say “cause or no cause” there to be clear there. And then the other observation I was going to make, I think that it was about number 5, was just to say that right now I believe the ASPT policy, way earlier on in the committee section, places dismissal very specifically with the DFSCs. Let me see. So first of all that's actually not the comment that I wrote, but that may need to be looked at and tweaked if that's where we want to go. The other thing I think I meant there was that AFEGC currently does not have dismissal in its jurisdiction and we found when looking at academic freedom stuff, not around the country but in terms of the AAUP recommendations that that was misguided on our part a long time ago not to be able to appeal to your AFEGC, because that's what they exist for. So we're going to, you know if we pass this as it is, have to take that exception out of AFEGC policy as well.

Dr. Dean: Yeah I'm just going back to k., if you'll permit me. Sometimes it takes me a minute to find my notes on the discussions. With regards to the referring parties may suggest questions to the CFSC, which shall retain the right to determine whether and how a question is asked, with the omission of those two words “in writing,” the reason we left that out in this revision is because we did not want to give a misimpression that you might have to submit all your questions ahead of time and not be able to respond during the proceeding if something came up that you felt needed to be questioned. So it could be an instance where now something has revealed you feel the question should be asked, but you didn't submit that in writing last week, so too bad for you type of thing. So that's why we left those two words out, but left it to the CFSCs to determine whether and how questions would be asked (inaudible)

Senator Kalter: Okay. Anyone else on that or anything else in number 5? All right. We are making great progress. Now B.6, 7, 8, 9, and 10.

Senator Horst: Which is the end.

Senator Kalter: Twenty… Actually, it's not quite the end, because we’ve got the Appendix, but it's 20 and part of 21, Provost Consideration of CFSC's Recommendations. Anyone have anything on that part and anything beyond it? I just noticed, by the way, a weird numbering thing there. You have that title and then at 8 you have a President's Consideration of Provost Recommendations, but a 7 in between, so that seems a little… Is that an interim, or is it part of the Provost Considerations?

Dr. Dean: It is part of what happens after the Provost has considered the…

Senator Kalter: So it's a…

Dr. Dean: (inaudible) these recommendations, so you're right, they are interrelated, so you might renumber that.

Senator Kalter: Renumber that. Okay.

Dr. Catanzaro: Or leave 7 as is with a title, Faculty Members' Response to the Provost Recommendation.

Senator Kalter: Anybody else see anything in 6 through 10? All right, if not, anybody see anything in Appendix 7 that needs interrogation? And if not, let's move to Article XVII.L. This is going in the appeals policies and procedures section. By the way, keep your energy, because if, we're going to use this two hours wisely and so we're not, even when we get done with this we're going to move on to AFEGC policy so that we don't cancel Senate for naught. So Article XVII. Anybody have any observations about that one? By the way, guys, I think the silence is a great thing, because it means that you did a really good job on this stuff, and thank you for it. I have just some very minor tweaks in number 3. The chairperson of the FRC will respond to the faculty member within five days following the receipt of a written intent to appeal and will notify the Provost, the CFSC, and then it says the party initiating the disciplinary action, and I thought it might be just simpler to say, and if applicable the DFSC or something like that, because I don't know why, but the last part was a little confusing to me, so that was one thing. And then same thing down in the minority report part of number 9, and that was all I saw there.

Dr. Dean: So I can understand why it might seem more streamlined to write it in that way, but just to explain why the wording is the way it is. So at this point there has been a decision made at the Provost level and there is now an appeal, so what's being specified there is all layers of parties involved in the process up to that point. So working backwards it would be the Provost who just rendered a final decision or letter, it would be the CFSC who had reviewed and made the recommendation to the Provost, and then it would be whichever body originated the action itself, DFSC or Provost, so that's why they're all left in there in that way. It's specifying layers of processes, not necessarily individuals, so that's why Provost repeats twice.

Senator Kalter: Got you. All right. Anything else on L, XVII.L? All right. Let's go to the three pieces of feedback from the DFSCs. One is from the English Department DFSC, which I said one part of this last time, and the next part was going back to the Faculty Rights section, which is in article XII. One of the members of the English Department DFSC was worried about number 4 there. This is, again, Faculty Rights page 4, number 4, where it says records… This is the part where if you're going up for tenure and promotion whether or not the records can be reviewed by the committee, that's if you've been disciplined before, in other words. This person was concerned about the “may be reviewed” because of how passive it was, it was in a passive voice, and wondered should we change this to the “faculty member may request that the DFSC review,” because the concern there was one that we've talked about before that we don't want to set up a situation of double jeopardy where the person has already been disciplined, and then we decide to kick them out as a higher penalty. Would that be an acceptable way to rewrite that to have the active voice, and then say that the faculty member is the one that gets to trigger that review, rather than leaving it to the winds of chance, so to speak.

Dr. Horvath: I think that would be… I mean, again, part of our intent here was that the faculty member should have the right to make clear whatever the disciplinary procedure, whatever the discipline was to their DFSC when they come up for tenure/promotion. They should have the right to clarify things so that the record is clear. So I think what you just said is totally in keeping with our intention.

Senator Kalter: Okay. It looks like you're all nodding about that. Sam is looking out contemplatively.

Dr. Catanzaro: I'm wondering if we want to make clear that the committee could review such documentation upon its own initiation or… I don't have an opinion at the moment. I'm still thinking about it. Or do we want to make clear that the committee does not and may only review it upon the request of the faculty member, which I think I'm leaning against, but rephrasing it that way…

Senator Kalter: Or potentially say something like the DFSC may not use a prior disciplinary action against the faculty member in tenure and promotion. Right?

Dr. Catanzaro: Well…

Senator Kalter: Does that make sense or not make sense?

Dr. Catanzaro: Would you interpret it as using the prior disciplinary information if let's say it was in the record, it happened in the third year, there was a sanction applied, and then in the run up to the actual application to tenure there was a recurrence, and I would argue that it's a relevant part of the record in the committee. I mean we wouldn't want the committee to say, oh three years ago you did this, and even though you were disciplined then, we're going to not tenure you now. That would be probably inappropriate, but if there was a recurrence or similar kinds of problems that didn't reach disciplinary threshold, but looked like a pattern that was of concern moving forward. I mean it will require very careful professional judgment, which is why we elect some colleagues to these committees and not others. But, I mean, that change is probably a good one, but it does have a potential unintended consequence that we should think about. So the change you started with changing it to active voice.

Dr. Horvath: Yes. I mean one other confusion perhaps that we did consider and, again, we went the length we went with because that was our preference, but there is a reference in the ASPT document in the promotion and tenure, criteria for promotion and tenure, that says basically that you could be voted down for tenure if your colleagues found that your behavior in meetings, that you weren't a good colleague. Again, it's not a collegiality requirement. You have to behave unprofessionally. I can't remember the exact language.

Senator Kalter: Collegiality has to be connected to research, teaching, and/or service.

Dr. Horvath: And the language that was in the Constitution about professional behavior. The problem is right now we don't have any way to document or adjudicate whether or not your behavior is unprofessional, because we don't have a current disciplinary policy that has that as a finding. So right now your chair could decide your behavior is unprofessional. So if the DFSC could review disciplinary findings in the past, that would be the documentation, the finding of unprofessional behavior that would seem to make that part of the tenure policy fair and right. Again, you've been found to be behaving unprofessionally by a faculty body, by your colleagues, and without that it remains vague and unclear and it's hard to figure out how you could ever be fairly found to have had violated that, if I'm being clear. I don't think I am, but…

Senator Kalter: It's hard to be clear on this one, really. I mean, this is a hard nut to crack.

Senator Horst: I'd like to agree with my colleague. I think it's important that the DFSC at that moment has the clearest record and doesn't have innuendo and rumors. Even if they don't think it's in the back of their mind, it could subconsciously almost affect their decision, so I really think it's crucial that they have the exact text of what happened so that they have the clearest possible picture.

Dr. Dean: And the required corrective actions as well. So, yes, that happened and I was asked to do X, Y, and Z, and I've done that. And now I win an award from CTLT because… with the humor, nobody's getting my jokes (Laughter) But, yeah, I'm sorry if I try… These are very serious matters and, I mean, we're talking about a very serious matter, and sometimes you can almost feel the tension in the room when we're talking about something this serious as dismissal. So forgive me. It's my nature to try to cut the tension a little bit. But, yes, this is not… I just want to emphasize that this is not only looking back from a negative standpoint, you did, you did, you did, we're trying to build a case up to exclude you from whatever you're up for, it can also be used in a positive sense, which is, as you said, eliminate the innuendo, eliminate the rumor. Yes, that happened. Here's what I was asked to do and I did it. We're done. Let's move on. Now look at my record that I bring to the table and make a decision based on that.

Senator Kalter: And I'm going to guess that you'd also agree that, again, we have checks and balances so that the CFSC and the FRC and the AFEGC are all there if the DFSC runs wild in some way in a tenure and promotion case where they are putting somebody into double jeopardy. Okay. All right. So that one was the one from English. It's funny that Dr. Horvath mentioned the thing about chairs, because the next piece of feedback was from the CAST CFSC. Dr. McLoda writes: “I have received input from all members of the CFSC. All are in agreement with the proposed new articles as described in attachment you sent me. One CFSC member went on to express a concern that I'd like to share with you. This member reminded our CFSC that the chairperson/director only has their one vote in the process, which could be problematic in special cases, such as when the faculty member in question is a DFSC or CFSC member. What if the offending faculty member has likeminded people or close friends, etc., who will not recuse themselves from the conversation. The authority of the chairperson/director of the unit is minimalized in the proposed new articles. This leaves the burden on the dean, legal counsel, and the provost. The CFSC member reminded us that it is precisely the chair/director who has to deal on a daily basis with the fallout of these sorts of personnel matters.” So that that one member asked that the role of the chairperson/director be considered more prominent than described. And I sent that to you guys, what was that, earlier today or yesterday?

Dr. Horvath: Yesterday.

Senator Kalter: Did you have any comments about that?

Dr. Horvath: So we just agreed with everything you said. And your response to that…

Senator Kalter: And my response. I can read my response. My response was to thank Todd and saying that we would convey that concern to the Caucus and the URC reps, and then I said: “It is indeed the case that the long-term ethic here at ISU is that the ASPT system in general gives equal weight, rather than greater weight, to the votes of chairpersons and directors of departments and schools and to deans of colleges in all DFSC, SFSC, and CFSC decisions, while allowing for and/or requiring minority reports in the case of split votes. This ethic is meant to protect faculty against administrative fiat. It also ensures true shared governance decision making on matters in the academic area broadly conceived.” So you don't have to read between the lines, but I was in disagreement with the concern, because I think, again, there are lots of checks and balances there. If there were, in other words, the DFSC were having a discussion of sanction, suspension, or dismissal, there would be a vote, because the chair has the ability to bring that to a vote, and if that person lost that vote, but there was an egregious action on the part of a faculty member, the CFSC would then look at it, the FRC could, etc., so that person is actually, the chairperson or the dean is protected by our shared governance rather than being helpless to it, and I don't think we want more hierarchy than we have at this university. Right? All universities are hierarchical, but I think that's going in a direction that is against our longstanding ethic.

Dr. Horvath: That's right, and I would only add two things. I mean that's exactly right as far as we're concerned. The document does leave lots of room for resolving behavioral issues before the disciplinary process even starts and, of course, that will involve principally the chair or the director of the unit. There's also the provision if the faculty person is, their behavior is so egregious that it can rationally be construed as threatening, then the Provost can deal with it immediately, but then the faculty has oversight to make sure that there is not an inappropriate exercise of authority. Right? So, again, there's faculty oversight, but the chair and the provost and the dean have the ability to deal with these personnel issues pretty much the way they always have, just with faculty oversight.

Senator Horst: Yeah. I just, the minority report would be signed by the people who agreed with the minority report and, at that point, that the chair put his name on and his opinion would be no.

Dr. Horvath: Absolutely.

Senator Kalter: All right. It's harder to move to the Department of Politics and Government one, because they were incredibly thoughtful and thorough, so we have a bunch of things that we might discuss, but let me just try to hit the highlights and then ask if anybody has any comments on them. Their first point, and it looks like they brought this to the whole department… So I told the chairs and deans you can share this only with your DFSC or you can spread it to all of your faculty, and they decided to have a department meeting about it. They say first that they think that all of these articles should be based only on the behavior of the person and not on the behavior of persons other than the faculty members. So we alluded to this in previous conversation. Our suggestion, they say, is to remove from the ASPT disciplinary articles any provision that can be interpreted to permit the imposition of discipline on a faculty member based on the behavior of other persons, persons other than the faculty member. A further suggestion is to include a statement of principle in the ASPT disciplinary articles perhaps in a faculty rights section that faculty members shall be disciplined only based on the behavior of the faculty member. So that's their first point.

Their second point was that in Appendix V it says that if… Let's see, I'm trying to shorthand this. If the DFSC can impose sanctions without the disciplinary… Oh, I see. They're asking can a DFSC or SFSC impose sanctions without the disciplinary process continuing on to the CFSC and the Provost, wouldn't that be, you know, a better way that it would help remediate situations without having it to go to different levels, and they specifically point to XIII.C.1.b and say something about if the faculty member accepts the proposed sanctions. In other words, could the DFSC just wrap it up if the faculty member is in agreement with that? So that's their second point.

The third point is about faculty performance. They say it's discussed in many different places; however, that the disciplinary article should concern only disciplinary proceedings, not performance, and have a number of suggestions about changing the name of the article and removing certain parts of XV that performance-related dismissal procedures, saying somewhere else performance-related dismissal procedures are the same as those outlined for disciplinary dismissal and restricting the language in a performance evaluation that provides relevant evidence of the faculty member's behavior at issue in the proceeding.

The fourth one was to put a limit on how long a suspension could be extended by a Provost, and they're suggesting three months.

The fifth one was that we, as a Caucus, hold an in-person forum inviting all of the ASPT faculty to give us their oral feedback.

And then the last one was that they think that these articles should be separate from the green book. So laying all of those out, does anybody have any comments about those suggestions?

Dr. Horvath: Just number 2 is easy. That's already in there. Right? So, again, the DFSC and the faculty person can come to some agreement about a remediation. As long as the faculty person agrees, done deal. If the faculty person disagrees, then the disciplinary proceeding continues. But if the DFSC and the faculty person can agree, then we're done.

Dr. Ellerton: And, I mean, one possibility, although it is in there, if it is felt a need to be explicit, its article XIII.C.1.b states the intent of such consultation that's between DFSC and the faculty member is to reconcile disputes early and informally. It could have the phrase added “and may include sanctions agreed upon by the faculty member and the D/SFSC,” if it's needed to make it explicit or more explicit than it already is.

Senator Ferrence: So on the last point, I'll speak back to a comment I made at a prior session, which has to do with as a newer faculty member when you come in you're looking to the ASPT document as your guiding document, so I strongly feel that these belong within that document, because to create a separate document just creates the risk that I'd be unaware that they were there when I most needed to be aware of the items.

Senator Nichols: I agree, and I think based on something that Dr. Horvath said earlier that the understanding is these processes are operating within a normal context and administrative processes. When you take it out of that document, I don't think you can rely on the assumption that being in normal time and normal operations at that point.

Dr. Catanzaro: I was going to note in agreement with those comments that I think we had this discussion in Faculty Affairs Committee at the very beginning of this process, as Senator Horst might recall. And there was a brief period of time when we were working on them as a distinct policy, and then...

Senator Horst: The dismissal policy, which still exists. Yes. We were going to make it this policy, and then we decided to pull it into ASPT. Yes.

Dr. Ellerton: Already in the ASPT guidelines is the phrase, the system is intended to appoint, reward, and retain a highly competent faculty through a democratic system that involves faculty in the evaluation of professional competence, and both performance, the idea of performance and disciplinary, are included within that notion of professional competence, and so to separate them would introduce a totally unnecessary artificial layer in the ASPT document. I mean, our intent on URC was to have that as a cohesive document.

Senator Kalter: So you're speaking not only to the last point that they make, but point number three…

Dr. Ellerton: That's also point three.

Senator Kalter: …performance and discipline are not actually separable. In other words, that we already have an ASPT policy statement that puts them into that same book.

Dr. Ellerton: Correct. In other words, the existing statement talks about professional competence and performance and discipline are integral in that notion of professional competence.

Senator Horst: And I would also say that the ASPT document does mention dismissal as being under the purview of the DFSC, so it's already in there. I was wondering if, you know, regarding this question about professional evaluation versus disciplinary evaluation that they're bringing up, as I look at this language regarding dismissal and it says this phrase: Fitness of the faculty members in their professional capacity as teachers and researchers. Can you talk about how you see those two things intersecting? Is there always going to be a professional component when you're having a… Is it always going to be related to teaching, research, and service? Do you see what I'm saying?

Dr. Horvath: That's why we… I mean, this goes back to the conversation we had at the beginning about the “such as.” Right? That's why we pulled them apart. I mean, I don't think our intent was to add anything more than is in the Constitution. And, again, if that's what I implied, that's not what the URC wants. Right? We just wanted to make clear what the kinds of things that Constitutional language might be talking about. Right? Because we find that very unclear for just the reason you're pointing out.

Senator Horst: No, but my question is, their questions seem to discuss the relationship between disciplinary actions and professional duties. Are they always hand-in-hand? Do you always have to link it in some way to teaching-research-service or can they be separate?

Dr. Catanzaro: In practice, I think it would be extremely unusual that a case that raised the question of sanctions, suspension, or dismissal didn't have some flavor of both, and each case will have a slightly different mix or ratio. Imagine, if you will, the initiating concern or the precipitating event is an inappropriate comment made to a student not in one's class, walking to a parking lot, and the student, you know, and it's bad, so the student goes to the chair and complains. In the meantime, other students find out about it. They're reluctant to attend that faculty member's class meetings, because now they know something about him or her that scares them, freaks them out, so their ability to perform in their professional duties is influenced, but it's not because they gave a bad lecture. Right?

Senator Horst: I think almost every situation we come up with they would be linked.

Dr. Catanzaro: Yeah.

Senator Kalter: I don't want to cut that off. I'm just wondering if anybody else had any comments on any of the other things in Politics’… I don't know whether they're called a white paper…it's almost white paper. We have already talked about the behavior of persons other than the faculty member, and I think we resolved that last time or the time before. Does anybody have any comments about the three-month suspension limit? Agree or disagree with that? In other words, limiting the extension of the suspensions.

Senator Ferrence: Well, my thought when that was brought up went back to some things we discussed in previous sessions here, which is that clause, as I understand it, was put in because there could be circumstances where say the legal system was processing something and it would be hard to predict exactly how long the extension would be, so this would make it impossible to say wait until you found out the outcome of a court hearing, so I think the purpose of the open-ended extension is because there is an open-ended nature to it, because there could be circumstances where they’d have to be used very carefully, but if you were going to extend, it might be longer than that time period.

Senator Kalter: Does it make sense to you for if you keep extending it… Like let's say you had to do, you know, three months, then three months, then three months, that after that first three months that the CFSC approval would be needed to keep extending it, does that make sense to you, or are you saying that no, the Provost should have total control over that.

Senator Ferrence: That goes back to my comment the degree to which I trust my Provost as opposed to having, you know, at what point would you want to have another layer, say yes, we agree, and maybe at least two bodies, you know, to re-up it for another three months would be wise just so there were some checks and balances, but it shouldn't just be a hard and fast at three months it couldn't be extended anymore, or whatever it says there.

Dr. Horvath: I think our intent, I'm pretty sure our language says this. I mean, the Provost needs good reason to extend it, and if the faculty person disagrees that the Provost has good reason, they can appeal it to the AFEGC and the AFEGC or the FRC, I think, actually, rules on whether or not the Provost did, in fact, have good reason to extend it. So the faculty person always has the right to appeal that extension.

Dr. Ellerton: Just on the question of an open forum, our comments were based on members of Senate who serve on Faculty Caucus have been elected, the University Review Committee where the members who are elected from tenure-track faculty, and it's their responsibility to present the views and concern of the tenure-track faculty who elected them at any discussions and revisions. That's a huge responsibility, but if you open it to, and there's been wide discussion at department/school level, that to open it to a wider forum at this stage would seem to go back to square one, which perhaps in the future for the next review of these disciplinary articles in X years' time which is part of the review cycle that might be appropriate as an initial step, but to hold it now I would raise questions.

Senator Ferrence: The only reason I'm going to jump in here is I may have in some ways caused the comment, although if I did I'm actually glad that I did. I brought up that within my own college, on a body that I'm a member of, this document was coming through just a couple of weeks ago and I said I felt that we really should pay attention to it because it was significant, and what happened at that body was I would say more than half of the faculty at that body said this is the first they've ever heard of this document. So the message was sent, you need to mention to people, and a number of the faculty reported that they had never heard of it from their department chairs. It had never been, messages, memos had been forwarded to the chair level, but it hadn't trickled down to the faculty level, and so it may be that that message got out and some people were unaware. We should have been aware, certainly, and we get lots of emails, but I think… So I don't know that people are trying to stall a process in this case as much as some people are actually taking interest in it and they are maybe perhaps, I don't know in this case, are curious as to what's been going on.

Senator Kalter: Just so that everybody knows, so two years ago when the original URC version of this set of articles came through the Senate, there was an all-faculty email that went out calling everybody's attention to it, you know, and I understand that people have, you can barely remember what happened last month, you know, versus three years ago, but they do “know about it” from that email, but it was two years ago. When sending these out, I sent it only to chairs [for DFSC distribution] and deans [for CFSC distribution], to the FRC, to the AFEGC, to OEOA, and the Integrity people and somebody else, probably Rob Blemler, who is the state ethics officer, and said that it would be fine with us if they distributed it to their faculty, but did not say please do that. Right? So it was left up to chairs, directors, and deans whether or not to do that. Does anybody else have any thoughts about that?

Senator Horst: Yeah. This document has been in front of the Senate for quite some time and the Senators should be conveying that information to their constituents. I've been conveying that this is going to be in front of the Senate for years, and this is an open meeting. People can attend this through the Open Meetings Act and so they can engage with their Senators if they come to the meeting and they hear something that they'd like to comment on. Also all the Senators, as with all the business we do in the Senate, we should be sending this material to our constituents.

Senator Ferrence: And let me just be clear. I'm not taking a position one way or the other on whether there should be or shouldn't be a forum. I just wanted to clarify that, you know, I've been doing I think my due diligence, as Senator now that I am, to let it be known, and a few people have been surprised, and so that may be where it's coming from, but I didn't sense in the room any grave concerns, but more of a genuine interest that somehow, you know, it wasn't on their radar.

Senator Kalter: From the rest of the silence in the room, I'm going to take it that you're not into the in-person open forum. Am I correct? That you are saying that we will invite our faculty to come to the Senate and look at the open meeting, but not have a special forum. Yes? It looks like… All right.

Senator Horst: Could we put it on the web page, the Senate web page?

Senator Kalter: It is actually… I think the earlier versions are on the web page, but we haven't put, I don't think we put this version up on the web page, but we can certainly do that. Yeah, we can replace what's up there with this one. All right. It looks like we're able to wrap this part up.

We have 20 minutes left, so I'm going to suggest that we try to move through AFEGC A and B, but not D, because D is way too long to move through, and Dr. Dean did you want to make a final comment?

Dr. Dean: Sure. Yes. URC has asked me to inquire what happens henceforth. So I understand we've had a lot of discussion and there have been some excellent changing clarifications and the like. I don't think it's your intent to send it back to us -- I think you made that clear -- but we would like to know, you know, what happens. I don't think, I haven't heard anything substantive changes agreed upon by this body, but what would happen if there are subsequent substantive changes…

Senator Kalter: So I think I have heard a couple of substantive things, and what we will do is make sure that we've got all the minutes transcribed. During winter break I will be going back through all of those minutes and making the, either tweaks or major changes that people seem to be leaning towards, and then present that in January to the faculty members of the Executive Committee to see whether we're ready to move towards action items, and then at that point we will invite you back to be there while the action items are going through and any debate that may go on as a result of those new drafts, but I didn't want, given that URC spent all of last year and part of, lots of this summer and the year two years ago, I don't think it's fair to send that back yet again. It's the job of this chair now to do the final edits. All right, and thank you so much for all of your time and attention to all of it, and you don't have to stay through the AFEGC discussion, but we're going to go on until our hard stop at 9 p.m.

***Proposed policy changes for AFEGC:***

***08.15.17.01 Summary of proposed AFEGC changes 2017 2018  
08.15.17.03 AFEGC policy 3.3.8A***Senator Kalter: I'm just going to go off of my summary of the proposed changes to AFEGC. Section A is the committee leadership and membership section, and I'll just do the highlights of what is being proposed to be changed here. First thing is that we are adding formally for the first time an alternative vice chairperson so that a chair or acting chair can always consult internally regarding whether something is within AFEGC jurisdiction and who the appropriate respondent is. Right now the AFEGC chair is acting alone in having to make those decisions, and I don't think the committee felt that that is a very safe place for an AFEGC chair to be. So, for example, if somebody says, if a chairperson, an AFEGC chairperson says this is not in our jurisdiction, but it's kind of a borderline decision, that person is putting themselves at risk by not being able to consult with anybody else on the AFEGC. And the alternative vice chairperson is so that, for example, if the current vice chairperson happens to be from that person's department, like if a case comes up from Communication Sciences and Disorders and the vice chair is a CSD faculty member, you don't want the person discussing it with that person, you want an alternate vice chair. Right?

The second thing is moving the election of the chair and vice chairs to the spring in order to improve continuity of leadership and training and allow for summer coverage in case of a preceding chair's retirement, resignation, leave, or absence, which has happened. We're going to go back to the flow chart later, so I'm going to skip that one. We're going to also skip number 4, because we decided to keep 3.3.8C in the policy, but just change it so that there's no voluntary conciliator.

There are also instances of removing the need to get agreement of every single party to reasonably extend deadlines. What this has meant for AFEGC is that somebody who is being a little bit intransigent can hold up a whole process, even if it's very reasonable to extend deadlines. So we want to move that more into the AFEGC's decision making rather than giving a respondent and a complainant the ability to hang each other up for bad reasons.

Next thing was adding to the AFEGC chairperson's charge the authority to determine jurisdiction and consultation with the vice chairperson or the alternate, and then presumably written into the proposed policy is that the final ruling or a tiebreaker would be by the Senate chairperson. That part could change if people feel uncomfortable with that, but we were trying to figure out a way to make it as close as possible, again, thinking about confidentiality issues, and that usually decisions about jurisdiction would be decided within the AFEGC, but if for some reason there is an argument that the Senate chairperson might be in the best position to be the tiebreaker there given usually there is more experience with some cases.

And then finally -- this is a big one, actually -- adding six more tenured faculty to the committee pool, because what they have found is that sometimes because of travel, ineligibility concerns, that kind of thing, that it is sometimes difficult to get a committee together. So that's going to be if we do that it's a hard thing, because we sometimes don't have even nearly, we have just the number of volunteers as we have seats, but leaving it open to expand the number of people serving on AFEGC. All right, so with all of those, those are the main things out there, does anybody have any comments, questions, or concerns about those proposed changes?

Senator Horst: I just have an initial thought about expanding the pool, which seems like a good idea, but we now have that University Hearing Panel. Those members can serve on other external committees, but the restriction for the AFEGC is that they cannot. Correct? And so perhaps we might… If we are expanding this pool further, maybe we can think of them as the University Hearing Panel.

Senator Kalter: I couldn't agree with you more and I saw the direction you were going, and because we on Exec had to make a decision about that recently where somebody who was serving on another external committee also wanted to serve on AFEGC and we really needed that person on AFEGC, or it might have been vice versa, and we decided okay that's going to be okay because they really, those committees really didn't have much to do with each other. And the whole purpose I think of our rule that you can only serve on one external committee at a time is first of all to give other people a chance, which doesn't really apply to AFEGC because it's not like people are beating down the doors. Right? And also I think because there can be like we have a thing where you can't be on Senate and an external committee at the same time to prevent the overruling kind of function, right, in a Senate, but I think that that makes a lot of sense to be able to serve on AFEGC and another external committee if you want to at the same time.

Senator Horst: But not DFSC.

Senator Kalter: But not DFSC.

Senator Horst: There's a class of committees that you would have to be careful about, but if they're on the University's Service Award, that's okay.

Senator Kalter: Right. Yeah. Who cares? Any other observations, comments, or questions about that? All right. If not, we'll probably move those to action soonish, soonish.

***08.15.17.04 AFEGC policy 3.3.8B***Senator Kalter: Going to 3.3.8B. This is the Types of Cases and Procedures for Cases. So, again, going back to the summary of proposed changes, the first main thing is moving information about filing of referrals and complaints from the general subsection to specific subsections and making it specific to referrals or complaints. There's a reason for that. It wasn't working out the way it was written.

Clarifying the status of academic breaks with respect to business days in the timelines. That will make Senator Ferrence very happy.

Flipping the opt in to an opt out when it comes to email use for confidential communication. In other words, a couple of years ago we had decided that it's kind of risky. In fact, I just had an interesting incident where I received something from the Legal Counsel's office and I wrote them back and said I think you meant to bcc somebody else, and she said I thought all I did was reply, you know do a reply all. I don't know how you got onto the list. And I thought well, it's a darned good thing that I don't know anything about what you're talking about and that I'm not going to tell anybody anything but the fact that it happened. So, in other words, we were trying to protect people who are involved in rancorous things and we decided to make it a “you have to agree to use email.” The group of people that I met with over the summer were very adamant that that was making it incredibly difficult to meet timelines and so wanted it be an opt out, like that you have to say explicitly “I don't want to use email for this purpose.” Okay, so we can talk about that.

One thing was just clarifying who receives correspondence when it comes to referrals.

One thing was allowing a Senate chairperson to request an extension of a timeline if it's a referral case. Dr. Catanzaro and I have talked about this because of the ASPT timelines and how they can be very rapid, but at the same time you can imagine that the Senate might not be able to act really, really quickly about certain things, so just being able to request it and find out if you can get an extension.

This one is a pretty big one I think. Changing the timelines for document submission. Moving some of the current timelines that are currently in section D into this section, and I say changing it to be legally kosher and fair to the respondent. So what we found out when really reading this closely was that the timeline, while on the surface it seemed to make sense, ended up giving the respondent not as much time as the complainant, and so what we're trying to do is tell the complainant, here's all of the stuff that you need to do to put together your case in this section so that they have a complete case moving forward and then it starts to trigger the next set of deadlines, so to speak, and then there are some changes in D about those deadlines.

The next thing is -- and this one may be controversial -- empowering the Faculty Hearing Panel to request written witness statements from complainant witnesses and signaling to complainants to gather them themselves. So that's a fairly major change if it were to be agreed to. Right now we basically rely on oral testimony and oral witness statements. They are recommending that we at least give the panels the right to request written statements.

One thing is referencing the existence of the uniform procedures, which were just created over the summer.

The next thing is changing consultation regarding appropriate respondent from the AFEGC chair with the Provost to the AFEGC chair with the vice chair or alternate. So that's another major change. Right now in the AFEGC process if you have a case, the AFEGC chair looks at it, decides whether it's in jurisdiction or not, and then they have to go to Sam essentially. It says the Provost, but it's also a designee, and the Provost office and the AFEGC chair decide who the actual respondent is. You can imagine why some people feel uncomfortable with already alerting, not only alerting the Provost office to the fact that a case is going on at that early stage, but also simply having the administration know because it can, as Sam was talking about, the appearance of a conflict of interest versus an actual conflict of interest, it can give the person the impression that somehow the Provost office could be working in the background around what's going on with the case and that that might be perceived as unfair to the complainant or the respondent.

And then making the Senate chair the appropriate tiebreaker, the tiebreaker for the appropriate respondent. So, in other words, if you move that from AFEGC and Provost to inside the AFEGC, you would have to have some sort of tiebreaker. Or you could have it be the Faculty Caucus Executive Committee or you can have it be both, depending on what the Caucus preferred. Okay, so that's a lot of stuff. Does anybody have observations about any of that, opinions about some of the harder ones?

Senator Horst: I know it's a choice regarding the email. My one thought is the conversation we had with Legal recently. If I have all these emails regarding the AFEGC case, are they accessible via FOIA?

Senator Kalter: I think that it doesn't matter whether it's email or not email in that case. FOIA doesn't pay attention to the mode…

Senator Horst: They’re more easily accessible via email I guess then.

Senator Kalter: Am I right about that, Sam?

Dr. Catanzaro: That's correct. There are provisions in the FOIA in the act that allow General Counsel to attempt to shield some documents from release, but it's always a question as to whether that will get upheld, and I don't know, I frankly don't know if communications about an AFEGC proceeding would be shieldable. So really the issue with using email is it's just not secure. I mean, in practice it usually is safe, but in theory it is, you know, what you put in an email, consider it being broadcast to the world is the way I operate, unless it's a privileged communication, in which case it's protected.

Senator Kalter: It's very interesting that the summer committee said, well, neither is paper communication safe in any way. In other words, they were imagining people raiding other people's faculty mailboxes, and I thought that was interesting and entertaining and really unethical, but that was the argument that was made was that paper is no more safe than email. I can't agree with that, but I was massively overruled by the five other people in that group.

Senator Horst: It makes sense to go in the direction of email, but as we all know, it's easily searchable and much more easy to get a hold of through FOIA, so maybe at some point people could be warned if you go this route every single thing is easily accessible.

Senator Kalter: So warning people inside the policy.

Senator Horst: Yeah.

Senator Kalter: Okay.

Senator Hoelscher: I would agree with Senator Horst. It bothers me to have something automatic that is that dangerous. I think that perhaps most people would opt in, but I think they should opt in. It should be automatically out. It's strangely reminiscent of having to tell one of the software companies that you don't want your information to be public. You should be giving them permission for it to be public, not having to always go and do that, and I think it makes more sense to keep it private unless the person agrees to it.

Senator Kalter: As an opt in rather than an opt out? It may also be that if we change the stuff about the deadlines that it would ease the reason for the potential change. Right? That the reason for the change is because we have right now a very tight deadline schedule on AFEGC and if we made it easier to extend those for good reason just by committee members doing that, it might ease that off a little bit.

Senator Jones-Bock: For the email, is there not a site? I know SharePoint is an old tool, but is there not a site that they could log into to access the materials?

Senator Kalter: We can look into that. I'm trying to remember if we discussed that.

Senator Jones-Bock: Because that would take away…

Senator Kalter: There may be, there are some complications in the sense of who gets to see what and maybe one of the things that we were thinking of was different tech savviness of different people who are going to be panel chairs. Right? So like I only just discovered my OneDrive because of, you know, being on this particular committee, but other people were using like the OneDrive in Office 365 as soon as it came out. Right? And then how you do permissions and those kinds of things. But we could look into that.

Senator Jones-Bock: I think that would eliminate the email as well as the paper issue of your logging into a folder on your OneDrive.

Provost Murphy: A question. I want to make sure… I want to make sure I understand the conversation. Are we talking about the committee deliberations? You're not talking about the actual official communication to the, for example, the faculty member whose case is being heard. Or are you talking about both?

Senator Kalter: In general, we're not talking about a letter, for example, that would come out of the Provost office. We're talking about everything that leads up to that. So often the AFEGC will get contacted through email by a complainant and they'll put a bunch of sensitive information either in the email or in an attachment with the email. Then the AFEGC chair might email the respondent and say you've been, you know, named, and then request information. And so it's all about the building of the case and who's going to be the witnesses and what's my proof and all of that kind of stuff, and all of that exchange of documentation, and then taking that and distributing it to the panel chair, from the AFEGC chair to the panel chair and from the panel chair to the other people on the panel. So all of that stuff, and then I don't believe that we even actually discussed with the policy changes that other thing that can happen, which is that after, for example after a panel has heard a case they might exchange emails about what they thought of it. They did ask the question in terms of record keeping about that kind of stuff, like when we do that, do we need to keep that as a record or can that be flushed from the system, and so we asked Legal about that and I think that, I'm pretty sure that they said that that kind of correspondence can go away, but the final verdict has to be in our record retention policy. So that's the level of stuff that we're talking about and, as far as I know, even when somebody opts in or opts out, you know, right now I don't think that the committees have been seeing that as whether they can converse with one another, but whether or not when you converse with a complainant and a respondent you can use email, if that makes sense.

Provost Murphy: That helps. Thank you.

Senator Kalter: Which is actually a good thing for you to bring up, because it's kind of problematic if somebody has opted out or said I don't opt in that the committee might still be using email about it.

Provost Murphy: Absolutely.

Senator Hoelscher: One possible solution would be to offer an expedited timeline if the affected party would agree to allow email to be used and offer a warning that it's going to take an extended timeline if they did not. I don't really have objections to having that as an option. I just think that when we're talking about something that increases risk, we should give the affected party thorough information and the option.

Senator Kalter: And to have to opt in rather than opt out. Okay. Anything else about any of the proposed changes to this section? We just hit our hard stop time. Does everybody know that and they're silent because they know?

***Adjournment***

Motion by Senator Dawson, seconded by Senator Marshack, to adjourn. The motion was unanimously approved.