



## Faculty Hearing Committee of the University Senate

2008-2009 Annual Report, Associate Professor Yael Vodovotz, Chair

### Faculty Hearing Committee Members and Service in fy09

As in the previous year's report, below you will find a table of summarizing the service of each of the Faculty Hearing Committee members in fy09. We met as a whole committee three times, two subcommittees were formed to address Procedure Oversight Designee and another to clarify the 3335-5-04 language. Additionally, we had two 04 cases where 5 member panels were required.

NAME	COLLEGE	TERM ENDS	SERVICE <sup>1</sup>	SUBCOMMITTEE <sup>2</sup>	ATTENDANCE <sup>3</sup>
Karen Bruns	FAES	2012		rules 04	29-May
Mohammed Yousif	LIMA	2012			
John Blackburn	BUS	2012		rules 04	1/26, 5/29
Judith Villard	FAES	2012	B (member)	POD	29-May
Barbara Lehman	MANS	2012	A (alternate)	POD (chair)	10/9, 5/29
Bruce Biagi	MED	2011	A (chair)	rules 04	1/26,5/29
Suzanne Damarin	EHE	2011	B (alternate)	POD	26-Jan
Robert DePhilip	MED	2011			
Barbara Polivka	NURS	2011	A (member)	rules 04 (chair), POD	1/26, 5/29
Yael Vodovotz	FAES	2011	Chair		
Ken Lee	FAES	2010	past-chair		26-Jan
Douglas Crews	SBS	2010			10/9, 1/26
Robert Parker	ENG	2010			
Gerald Frankel	ENG	2010	B (chair)		29-May
Altaf Wani	MED	2009	B (alternate)		1/26, 5/29
Terrence Walker	MAPS	2009			
Kenneth Jones	MED	2009	B (member)		10/9,1/26
Phoebe Spinrad	HUM	2009	A (alternate)		10/9, 1/26
Philip Binkley	MED	2009	A (member)		

<sup>1</sup> Indicates service on Hearing Cases: A (Avorgbedor), B (Benjamin)

<sup>2</sup> Indicates subcommittee service: rules 04 (revise 04 language), POD (procedure oversight designee)

<sup>3</sup> Date of Hearing Committee Meetings attended

### **Subcommittee Actions:**

1. *Subcommittee on Procedure Oversight Designee (POD)*: The subcommittee was chaired by Barbara Lehman and members included Judy Villard, Suzanne Damarin and Barbara Polivka. The subcommittee drafted a document (see appendix I) detailing the duties of a POD. This document is meant to be helpful to the different units on campus on trying to maintain a consistent protocol for this very important responsibility. This document once reviewed by the entire Faculty Hearing Committee in the fall, will be sent for approval and distribution to vice provost Susan Williams.
2. *Subcommittee on 04*: In response to the Senate Rules Committee request, a subcommittee was formed to revise the 3335-5-04 language since some of the wording was misleading and/or confusing. The subcommittee was chaired by Barbara Polivka and members included Bruce Biagi, Karen Bruns and John Blackburn. A draft version was presented to the full Hearing Committee but further revisions were requested. A second document (see appendix II) will be presented to the entire committee in the fall for approval. Subsequently, the revised language will be submitted to Rules for approval.

### **Changes to Committee Composition:**

Thank you to those on the committee who's term is ending with this report:

Altaf Wani, Terrence Walker, Kenneth Jones, Phoebe Spinrad and Philip Binkley.

We welcome our new members and look forward to a productive year:

Paul Beck, Michael Bissell, T.K. Daniel and Walter Threlfall.

### **Business in Progress:**

- POD guidelines need Hearing Committee approval and Vice Provost Williams comments
- 04 language needs Hearing Committee approval and subsequent comments from Rules
- Discussion on the requirement of annual reviews and consequence of lack of is pending
- Finalize the Hearing Committee guidelines for conducting an 04 case
- Appeal from an Assistant Professor in College of Pharmacy is pending

### **Hearings:**

*The case of Dan Avorgbedor from the School of Music*

A complaint was received by Ken Lee, at the end of his term as chair of the Hearing Committee, from Professor Dan Avorgbedor from the School of Music appealing the decision by the Provost pursuant of rule 3335-5-04. Yael Vodovotz, as the new chair of Hearing convened a Hearing Panel with Bruce Biagi as the presiding officer, Barbara Polivka and Philip Binkley as members and Barbara Lehman and Phoebe Spinrad as alternates. The panel met several times and discussed all relevant evidence. A Hearing date was set, however the case was settled with Dr. Avorgbedor resigning from the OSU prior to the Hearing.

*The case of David Benjamin from the College of Medicine*

A complaint was received by Yael Vodovotz from David Benjamin's lawyer and subsequently from David Benjamin himself (since the complainant must be an OSU faculty member) of the College of Medicine appealing the decision by the Provost pursuant of rule 3335-5-04. A Hearing Panel was convened with Jerry Frankel as the presiding officer, Judy Villard and Ken Jones as members and Altaf Wani and Suzanne Damarin as alternates. The panel met several times to clarify issues. A Hearing date was set, however the case was settled with Dr. Benjamin agreeing to resign from OSU prior to the Hearing.

*A note on these 04 cases: It was apparent that the rules as written were ambiguous especially regarding the collection of evidence, the role of the presiding officer, and the appointment of counsel to the panel. These issues will be addressed in the next year with clarification of 04 rules and further discussion with University Legal Affairs as to appropriate representation to the panel.*

Hearing Pending: Appeal from an Assistant Professor in College of Pharmacy

*Annual report approved and submitted by: Yael Vodovotz (chair), Bruce Biagi, Suzanne Damarin, Robert DePhilip, Barbara Polivka, Ken Lee, Douglas Crews, Robert Parker, Gerald Frankiel, Altat Wani, Terrence Walker, Kenneth Jones, Phoebe Spinrad and Philip Binkley.*

### Faculty Hearing Committee Meeting Minutes Oct. 9, 2008.

Thank you to all who attended our first meeting this past Thursday. Here is a summary of our meeting for those of you who were unable to attend:

We went over the responsibilities of the Faculty Hearing Committee including the differences between "04" and "05" cases. We decided to send the suggested revisions of the 04 language drafter last year to the Rules Committee, Ken Lee has graciously volunteered to handle that. Additionally, a subcommittee was set up to draft a procedure document for 04 cases, thank you Bruce Biagi for volunteering to chair the committee. If you would like to help Bruce, please email him at [beagi.1@osu.edu](mailto:beagi.1@osu.edu) Another subcommittee was formed to research the existing Procedure Oversight Designee duties and draft a one page "user manual" for future POD's to be able to use so that there is more consistency across campus. Thank you Barbara Lehman for agreeing to chair this subcommittee and if you would like to help Barbara out, please email her at [lehman.1@osu.edu](mailto:lehman.1@osu.edu)

Finally, I will ask clarification in the Faculty Cabinet meeting where the language for an update on the status of the New Fair and Impartial hearings issue.

I will keep you posted on future meetings and actions of the subcommittee.

### Faculty Hearing Committee Meeting Minutes Jan. 26, 2009.

Thanks for those who made the last meeting. I apologize for it taking a bit longer than expected but I realize that we ran into some significant issues. Below please find a synopsis of the meeting for those who were not able to make it. Action items are also specified.

Update on current 04 Hearing: The current 04 panel is headed by Jerry Frankel and involves a faculty detenuing and dismissal in the Medical School. The panel is on the fact-finding portion of the case and is spending significant time sorting out the information. Issues of interpretation of current 04 language came up and were discussed later. Jerry and the panel were thanked for their significant time commitment to this case.

POD (Procedure Oversight Designee) committee report: the report was discussed. Some minor changes were recommended. **The subcommittee was tasked to change the language as was suggested by the committee and resend the report.**

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Revisions to the 04 language: discussion on defining presiding officer: Ken and Yael informed the committee of concerns raised by Rules of the proposed changes of the 04 language. Specifically, discussion centered on the definition of presiding officer and lack of description of the position. A lively discussion ensued on whether the presiding officer should have a background in law or not since many decisions that need to be made may require legal advice. There are many issues associated with such a suggestion and time was running short so a subcommittee will be assigned to look into all possibilities that deal with the presiding officer including discussing appropriate issues with the University lawyer. **Please let me know if you would like to serve on this subcommittee.**

Faculty Hearing Committee Meeting Minutes May 29, 2009.

An update on the Benjamin 04 case was reported by Jerry Frankel mainly stating that the case was settled prior to the Hearing. Jerry also reiterated the difficulties posed by this 04 case due to inadequate guidelines as well as University counsel representing both the Provost Office and the Hearing Panel.

Barbara Polivka presented the changes to the 04 rules discussed by her subcommittee. There was much discussion on the language proposed and recommendation given to the subcommittee for further changes. Next draft will be reviewed in the fall.

Elections for the 2009-10 Faculty Hearing Chair were held. Yael Vodovotz, past chair, was re-elected unanimously.

## Appendix I

### **Duties of an OSU Tenure and Promotion Procedures Oversight Designee**

According to the Office of Academic Affairs Policies and Procedures Handbook, volume 3: Promotion and Tenure Review, section 3.6.2, TUI and College P&T committees will select one of their members as the POD. However, “although a single committee member is assigned oversight responsibility, all members of review bodies must accept personal responsibility for assuring that reviews are procedurally correct, fair, and free of bias for all faculty members. Review bodies, not the POD, are ultimately responsible for the integrity of the review process.”

Following are the duties of the POD, as specified in the OAA P&P Handbook (sections 3.6.3 and 3.6.6):

1. Assures that the review body follows the written procedures governing its reviews
2. Monitors the proceedings to assure that they are carried out in a highly professional manner
3. Specifically monitors the review process in regard to equitable treatment for candidates based upon protected status, which is defined as age, color, disability, gender identity or expression, national origin, race, religion, sex, sexual orientation, or veteran status (see Office of Human Resources Policy 1.10 at <http://hr.osu.edu/policy/policy110.pdf>)
4. If appropriate procedures are not being followed or if bias is detected, brings those lapses to the attention of the individuals creating the problem
5. If concerns are not resolved to the satisfaction of the POD, brings them to the attention of the relevant administrator
6. Checks candidate’s dossier to assure that it is prepared correctly using the most current dossier format, asks candidate to make needed changes, and verifies requested changes were completed
7. Specifically verifies the accuracy of all publications and creative works listed in the dossier, as required by the Dossier Checklist

Revision submitted by

Suzanne Damarin, Barbara Polivka, Judy Villard, and Barbara Lehman

4/17/09

## Appendix II

### 3335-5-48.10 Faculty hearing committee.

#### (A) Membership.

The faculty hearing committee shall consist of twenty-four tenured members of the regular faculty selected by the faculty council. Each ~~elected~~ selected person shall serve a four-year term as a regular member followed by a one-year term as an alternate member.

#### (B) Duties and responsibilities.

(1) Conduct hearings on appeals by respondents charged under rule 3335-5-04 of the Administrative Code following the procedures of paragraph (H) of this rule.

(2) Conduct hearings on complaints of alleged improper evaluation based upon reasons or considerations that infringe a constitutional right of the complainant following procedures of paragraph (C)(4) of rule 3335-5-05 of the Administrative Code.

(3) Conduct hearings on allegations of improper evaluation based upon inadequate consideration of the pertinent facts by the individual(s) making the decision following procedures of paragraph (C)(5) of rule 3335-5-05 of the Administrative Code.

(4) Conduct hearings on an appeal of a tenured faculty member because of termination of appointment during financial exigency following procedures of paragraph (B) of rule 3335-5-02.3 of the Administrative Code.

#### (C) Organization.

(1) The chair shall select three members of the committee to sit on each hearing panel. If disqualifications or case loading should require their service, alternates may be assigned to hearing panels.

(2) ~~The chair of the hearing committee shall rule on any objection by any party to the proceedings that a member of the panel should be replaced because of~~ ~~A member shall be replaced on a hearing panel if there is~~ a relationship to one of the parties, or a prior or current involvement with the facts or issues, or personal bias which may introduce prejudice.

#### ***Rationale:***

***The current rules do not state who makes the final determination whether such a prejudicial relationship exists, allowing for open-ended disputes over alleged prejudicial relationships; nor do they state to whom such an alleged prejudicial relation is to be reported. This revision corrects this by stating a final arbiter of this question.***

(3) A panel member or alternate may recuse himself or herself for any of the reasons stated in rule 3334-48.10 (C)(2).

~~(4) The hearing panel shall select a presiding officer who shall have responsibility to direct the proceedings of the panel. The presiding officer~~ ~~A hearing panel shall select a person, who need not be a member of the faculty hearing committee, to serve as a presiding officer.~~ The panel may select this ex-officio presiding officer to provide expertise in the conduct of a hearing and/or advise the panel ~~The presiding officer shall direct the proceedings, rule on matters involving the introduction of evidence, and advise the panel members on such issues of law and procedures as they may deem necessary. The~~

presiding officer, if not a member of the committee panel, shall not participate in substantive deliberations with the panel nor vote on decisions by the panel.

**Rationale:**

***The current language conflicts with the intent expressed in 3335-5-48.10(C) (1) (“The chair shall select three members of the committee to sit on each hearing panel”) that the panel, the body which deliberates and decides the individual case, be composed of three committee members. Ordinarily, the presiding officer would be one of those three panelists. The final sentence of 3335-5-48.10(C) (3) allows the situation where a fourth member of the committee could function on the panel as presiding officer and may participate as a deliberating and voting member. The proposed language change corrects this by allowing a non-panelist to (exceptionally) function strictly as presiding officer, and uniformly not gain deliberative and voting rights thereby.***

(5) As a standing committee of the senate, this committee is also governed by the provisions of rules 3335-5-46 and 3335-5-48 of the Administrative Code. (B/T 5/1/86, B/T 2/5/88, B/T 2/3/89, B/T 2/4/93, B/T 11/4/94, B/T 2/29/96, B/T 5/3/96, B/T 2/7/97, B/T 6/7/2005)

Submitted by Barbara Polivka, Bruce Biagi, Karen Bruns and John Blackburn