

Final Report of the Rules Committee, Academic Year 2015-2016

During the 2015-2016 academic year, the Faculty Rules Committee of the Ohio State University, pursuant to rule 3335-5-47.3, consisted of 10 members: 6 faculty senators (Trisha Van Zandt, Brian Winer, Jose Diaz, Robin Judd, Ben Givens, and Stefan Niewiesk), three students (TJ Beavers, Brandon Creagan, and Gabriel Quinones-Betancourt), and the secretary of the university senate (Tim Gerber). Two ex-officio members also attended regularly (Kay Wolf from OAA and Jan Neiger from OLA and OAA).

Summary

The rules committee oversaw revisions of 22 rules. Four rules concerned marks, recalculations of GPA, withdrawal from courses and the university, and honors standards; three rules concerned the elimination of May session; eight rules were related to the Board of Trustee bylaws; two rules concerned the university year and the new summer calendar; two rules concerned final examinations and the scheduling thereof; one rule concerned the composition of the fiscal committee; two rules concerned the policies on intellectual property, patents and copyrights. Changes and disposition of revisions to these rules are described below. Outstanding issues to be carried into the 2016-2017 academic year follow the description of the work accomplished.

Rules concerning marks, recalculation of GPA, withdrawal from courses and the university, and honors standards

A packet of obsolete rules was received by Rules from John Wanzer of the Office of Undergraduate Education and of the Committee on the Evaluation of Student Progress in September 2015. The proposed revisions to these rules address a number of concerns, from compliance with Ohio's policy on advanced placement credits, to changes to the rules permitting repetition of coursework (formerly freshman forgiveness), to changes that had been imposed by the changes from quarters to semesters. The revisions, which were numerous but minor, included:

- 3335-8-21 (Marks), paragraphs
 - F(1, 2) - EM credit limits revised to comply with state law
 - G(3, 4, 5) - inclusion of IX grade to permit extensions of incompletes
 - K(2) - PA/NP reduction of credit hours and deadline for changes to PA/NP option
 - L(2) - extension of changes to audit deadline
- 3335-8-26.1 (Recalculation of GPA)
 - D - All courses are included in the GPA calculation for honors unless a fresh start has been applied before the completion of 60 credit hours (as dictated by 3335-9-33)
- 3335-8-32 (Withdrawal from courses or the university)
 - C,D,E - application of withdrawal deadlines that fall roughly 25% into a semester, session or term, regardless of whether autumn, spring or summer
- 3335-9-33 (Standards for honors at graduation)

- B,C - reduction from 90 credits (under quarters) to 60 credits (under semesters) for honors eligibility

These revisions were sent by Rules to Steering and were presented to Faculty Council on March 3. Faculty Council voted unanimously to send the revisions to the Senate for their consideration. The revisions were presented to the Senate on March 24 when they were approved and forwarded to the Board of Trustees.

Rules concerning the elimination of May session

Following the elimination of May session in the fall of 2015 and the adoption of the new summer calendar, the Rules committee searched for mentions of the May session and proposed revisions, with the assistance of John Wanzer from the Office of Undergraduate Education, to the following rules:

- 3335-8-27.1 (Grade forgiveness)
 - A(1) - deadlines to petition for grade forgiveness that fall roughly 25% into a semester, session or term, regardless of whether autumn, spring or summer
- 3335-8-33 (Disenrollment from a course)
 - A(3) - deadline for disenrollment that falls roughly 25% into a semester, session or term, regardless of whether autumn, spring or summer
 - F(1,2) - deadlines for withdrawing from a course with or without a mark that falls roughly 25% into a semester, session or term, regardless of whether autumn, spring or summer
- 3335-9-17.1 (Additions to approved schedules)
 - A,B,C,D - deadlines for adding classes adjusted for the varying lengths of semesters, sessions or terms, including the accelerated 4-week terms of summer

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Rules concerning changes in the bylaws of the Board of Trustees

The Board of Trustees revised their bylaws in January 2016. This revealed a number of obsolete references to administrative positions that no longer exist, rules that no longer exist, and two obsolete rules restricting communication between faculty and the Board of Trustees and the president. The rules revised to accommodate the new bylaws included:

- 3335-3-21 (Vice president and direction of athletics)
 - Title, A,B - changed to reflect the change in title of the athletics director
- 3335-3-26 (Establishment of colleges)
 - Reference to paragraph changed, number of colleges updated
- 3335-3-26.1 (Establishment of regional campuses)
 - Reference to paragraph changed

- 3335-3-27 (Establishment of graduate school)
 - Reference to paragraph changed
- 3335-3-35 (Chairs of departments)
 - A,B- added acknowledgements of the role of the provost in nominating and conducting the annual reviews of department chairs
- 3335-5-10, 3335-5-11 (Communication with the president and the Board of Trustees)
 - Deleted
- 3335-5-46 (Senate committee operating procedures)
 - A(1) - Reference to paragraph changed
- 3335-11-01 (General discipline)
 - Elimination of obsolete title and reference to paragraph changed

These revisions were sent by Rules to Steering and were presented to Faculty Council on March 3. Faculty Council voted unanimously to send the revisions to the Senate for their consideration. The revisions were presented to the Senate on March 24 when they were approved and forwarded to the Board of Trustees.

Rules 3335-5-07 and 3335-8-35 concerning the university year and the elimination of May session

Two additional rules, separate from those revised to eliminate mention of the May session, were revised that address faculty responsibilities (particularly, time on duty for 9-month appointments) and the definition of the university year.

Rule 3335-5-07, definition of faculty duties and responsibilities, was revised to make clearer the distinction between faculty on 12- and 9-month appointments, and the “most common pattern” of a 9-month appointment was revised to provide specific dates (August 15 - May 15) to replace obsolete language that defined the pattern to be from the first day of the autumn semester to the last day of May session.

Rule 3335-8-35, definition of the university year, was revised to eliminate mention of the May session and to incorporate the newly-adopted academic calendar with sessions of varying length (especially in the summer). All revisions were to paragraph (A). Reference to the May session was deleted, and the new summer calendar, with its divisions into sessions of 4, 6 or 8 weeks was inserted.

These rule revisions were sent to Steering, who forwarded them to FCBC and CAFR. FCBC and CAFR approved the revisions, which were then presented to Faculty Council on April 7. Faculty Council unanimously agreed to send the rules to the Senate for their consideration. The revisions were presented to the Senate on April 21 when they were approved and forwarded to the Board of Trustees.

Rules 3335-8-19 and 3335-8-20 concerning final exams

These revisions were a continuation of a proposal made by CESP in the 2014-2015 academic year. In spring of 2015, CESP formed an ad hoc committee to examine these rules which stated (in summary) that all courses, with the possible exception of labs and seminars, will have a final exam (8-19) and that that exam will be given during finals week and scheduled by the registrar (8-20). Although rule 8-19 provided some flexibility on the format of that exam, it unambiguously stated that an exam will be given at the close of the course.

Because different disciplines have specific examination procedures that can't be accommodated within a blanket rule, the CESP subcommittee proposed revisions to update the examination rule. In addition, in recognition that the last week of classes and the reading period before the final exam period should be "protected" for the benefit of the students, they undertook a study of our peer institutions to determine how our final exam rules compare. The result of that study indicated that while our rule that all courses must have a final was very strict, our rules about what can and can't happen during the last week of classes was very lenient. The revisions tried to strike a balance between protecting students and permitting faculty to assess student performance according to best practices specific to different disciplines.

Whereas 3335-8-19 was formerly one paragraph stating that all courses must have a final, it is renamed (Student assessment) and broken into three paragraphs:

- (A) is new and states that all courses must have a syllabus that is provided to the student and that explains how performance will be assessed.
- (B) contains what remains of the old version of 8-19, and is revised to indicate that assessment of performance may take place using methods other than examination and to eliminate the requirement that such assessments must take place at the close of the course (after the last day of regularly scheduled classes).
- (C) is new, and gives some guidelines (and hence protection to the students) concerning the kinds of assessments that can and cannot occur in the last week of classes. The restrictions provided in this new paragraph were considered carefully in light of our peer institutions' policies, and were written as generally as possible so as not to second-guess the needs of different disciplines. The restrictions dealt exclusively with written, in-class examinations and include:
 - That comprehensive exams should be administered during the final exam period, when this period exists;
 - That written, in-class examinations administered during the last week of class before reading period should not be "bigger" than other written, in-class examinations for that course nor exceed 30% of the course grade (i.e., they should be typical midterms), and that any such examinations should be clearly scheduled in the course syllabus. To avoid disciplinary-specific issues, exceptions may be granted by the unit head.

These extensive revisions resulted in greater than 50% change, requiring that the old rule be rescinded and replaced with the new rule.

Revisions to 3335-5-20 were minimal, and make it clear that the registrar schedules only those examinations that are administered during the final exam period.

These revisions were sent to Steering, who then sent them to CAFR. CAFR had no objections and they were presented to Faculty Council on April 7. After vigorous discussion and several friendly amendments, Faculty Council unanimously agreed to send the rules to the Senate for their consideration. They were presented to the Senate on April 21, when a friendly amendment from the floor resulted in the elimination of a clause in paragraph (C) that stated that final written examinations that are the only examination in a course must be given during the final exam period, when this period exists. The amended rules were approved and sent to the Board of Trustees.

Rule 3335-5-48.11 concerning the composition of the Fiscal committee

The Fiscal committee deals with a number of issues of critical importance to undergraduate students. The current composition of Fiscal has only two undergraduates, which means a lack of continuity as students graduate and a lack of student representation on Fiscal subcommittees. In addition, representation from OAA and the CFO's office is critical for informing the members of Fiscal and facilitating their work. The changes requested resulted in the following revisions:

- (A) - an increase in the membership from 22 to 26 members
- (A)(2) - an increase in the number of student members from 4 to 6
- (A)(2)(c) - an increase in the number of undergraduates from 2 to 4
- (A)(4) - an increase in the number of administrative members from 6 to 8
- (A)(4)(c and d) [new] - the appointment of the provost's and the CFO's designees to non-voting membership

These revisions were sent to Steering and presented to Faculty Council on April 7. Faculty Council unanimously agreed to send the rules to the Senate for their consideration. They were presented to Senate on April 21, when they were approved and sent to the Board of Trustees.

Rules 3335-13-06 and 3335-13-07 concerning IPPC

These two rules accompany the university's new IPPC policies. The 06 rule states that such a policy must exist and outlines how changes to that policy will be managed, while the 07 rule manages conflicts of interest and conflicts of commitment for faculty, staff and students who participate in university technology commercialization companies. The unrevised 06 and 07 rules originally contained within them the university's IPPC policy, and the creation of the new policies therefore dictated extensive changes to these rules. Everything properly belonging in the policies was removed, and the remaining text updated and revised to reflect current university policies and current Ohio state law.

Work on these rules began in May of 2015. The committee obtained the assistance of many individuals during this revision, including Eunice Hornsby and Christie Frankhart of the Office of University Compliance and Integrity, Erin Bender of the Technology Commercialization Office,

Mike Mitchell of the Office of Legal Affairs, and Jen Yucel of the Office of Research Compliance. The revisions were completed in October of 2015 and sent to Steering for consideration.

Steering forwarded the revisions to the committee on academic freedom and responsibility, the IPPC committee, and the research committee. The revisions were presented to Faculty Council in February of 2016. Following a unanimous vote by Faculty Council to send the revisions to the Senate, additional revisions were proposed by members of the research committee and representatives of the TCO, resulting in the rules being pulled from the senate agenda. These revisions, which concerned the 07 rule uniquely, provide guidelines for when the UTCC procedure must be undertaken (paragraph A(2,4)), COI management for faculty not involved in UTCC research and development (paragraph F(9)) and COI management for faculty PIs funded by UTCCs conducting research on human and animal subjects (paragraph F(11)) were completed in March of 2016 and sent back to the IPPC, URC, and CAFR. The 07 rule was presented again to Faculty Council on April 7.

Specific changes to the 06 rule were as follows:

The original 06 rule was entitled "Patent Rights" and consisted of 4 paragraphs:

- (A) specified the applicability of the rule to technology and products arising from university research and excluded works of art, instructional materials and scholarship not produced for sponsored research or as a specific university duty.
- (B) declared the Board of Trustees intent to permit faculty to benefit from the commercialization of the products specified in paragraph (A).
- (C) stated that the Board of Trustees must establish a policy on patents and copyrights to be administered by the senior vice-president for research, places the policy under the purview of the now-called IPPC committee and specifies that changes to the policy must be approved by the university senate. Subsections of paragraph (C) specify the composition of IPPC and provide for rights of appeal to the IPPC.
- (D) places the senior vice-president for research in charge of the commercialization of technology and restricts his or her activities to conform to the policy on patents and copyrights.

The revision is now entitled "Rights to and interests in intellectual property, patents, and copyrights" and consists of 3 paragraphs:

- (A) states that the university shall have an IPPC policy to be administered by the president or his or her designee. This is a simplification of part of the old paragraphs (C) and (D), and was motivated by the desire not to have to change the rules every time the name of an office or title of an administrator changed. The definition of "university research" and products that would and would not be covered in the policy was moved to the policy itself.
- (B) is very similar to the old paragraph (B), except that issues concerning contracts and grants have been changed to refer to the policy.
- (C) is also similar to the old paragraph (C) and ensures that any changes to the policy must be approved by the IPPC policy and voted on by the university senate.

- Subsection (C)(1) removes the description of the composition of the IPPC committee and replaces that description with a reference to Rule 3335-5-48.19, which establishes the IPPC committee. Subsection (C)(2) is reworded but unchanged in intent.
- Paragraph (D) of the old rule was deleted as it properly belongs in the IPPC policy.

Specific changes to the 07 rule were as follows:

The old 07 was entitled “Rules governing faculty and staff participation in companies commercializing university research” and consisted of 7 paragraphs. As background, this rule was based on a document entitled “Model Rules Governing Faculty and Staff Participation in Companies Commercializing Their Institutional Research” authored by the Ohio Ethics Commission and provided to all state colleges and universities in Ohio in 2000. Many paragraphs in the old 07 rule come word-for-word from the model rules.

- (A) was the “Policy statement.” It stated that the ORC permitted faculty to hold equity in commercialization companies and that the rule (07) was to delineate the conditions under which this could happen.
- (B) was titled “Definitions.” It defined a TCC, emphasized the university’s ownership rights to technology created by faculty and staff, and established the technology transfer oversight committee and conflicts of interest administrator.
- (C) was titled “Applicability.” It listed faculty who create technology to be commercialized, as well as similarly situated staff and students. The language was taken verbatim from the Model Rules.
- (D) was titled “Responsibilities of department chairs and staff supervisors.” This paragraph placed the responsibility for ensuring that faculty, staff and students involved in commercialization activities comply with university policies. The language was taken verbatim from the Model Rules.
- (E) was titled “Approval process.” It had 8 subsections, and most were taken verbatim from the Model Rules.
 - (1) required faculty, staff and students to obtain appropriate approvals from their supervisors before engaging in TTC activities. It also placed management of business terms in the TCO and required input from the COI administrator in the COI plan.
 - (2) places the TCO in the position of approving business terms and COI plans.
 - (3) prohibits faculty and staff from negotiating business terms between the university and the TCO.
 - (4) lays out the necessary components of a business plan to be provided by a TTC to the TCO.
 - (5) ensures that the university has an equity interest in the TTC.
 - (6) compels department heads and supervisors to be COI oversight managers accountable to the TT oversight committee.
 - (7) prohibits department heads and supervisors who are participants in the TTC from providing oversight of the TTC activity and requires that an alternate oversight manager be found.

- (8) Prohibits TTC transactions in situations where an appropriate oversight manager cannot be found.
- (F) was titled “Responsibility for university duties” and had 4 subsections. Most of the language in these subsections was taken verbatim from the Model Rules.
 - (1) was a reminder to faculty that their primary responsibilities are still the research, teaching and service for which they were hired. In addition, the section cautions faculty against using research assignments to further the purpose of their TTCs rather than the academic development of the students. It also contained a reminder to faculty to remain collegial.
 - (2) was another reminder of the faculty’s primary responsibilities, and requires faculty adherence to all relevant policies. The individuals responsible for oversight of faculty activities are named.
 - (3) dealt specifically with staff and requires that staff take approved leave for TTC activities that are scheduled during their time on duty. Adherence to university policies is required and the individuals responsible for oversight of staff activities are named.
 - (4) requires staff members to gain the approval of their supervisors and to pursue only those TCC activities that advance the mission of the university.
- (G) was entitled “Conflict of interest management standards” and consisted of 14 subsections. Many of these subsections were taken out of the Model rules and were required by the Ohio Revised Code.
 - (1) limited the use of university resources for TCC research only to those activities performed under a contract with the TCC.
 - (2) restricted the management roles of faculty and staff and required that any such management activity be reduced over time according to enforceable milestones provided in the agreements between the university and the TCC.
 - (3) required faculty who violate the conflict of commitment guidelines to request an appointment reduction or a leave of absence. Sabbaticals could not be used for such leaves.
 - (4) established guidelines for staff that were parallel to those required for faculty under section (3).
 - (5) prohibited students from using university resources to perform TCC research except under a sponsored research agreement with the TCC, and guaranteed that all such research is publishable to comport with the rules of the graduate school. It also required that the student be fully informed of any publication restrictions before research begins.
 - (6) required appropriate faculty supervisors (e.g., the department chair) and a company representative to disclose to student employees of the TCC their rights and responsibilities before employment.
 - (7) limited student employees of a TCC to those who are not subordinate to the faculty member who holds equity in that TCC. All other students must have been hired under contract.

- (8) gave the TT oversight committee the authority to approve agreements between the university and the TCC concerning the purchase, sale, or rental of university property or services.
- (9) limited the ability of faculty not directly involved in the development of the technology commercialized to hold equity interest in the TCC except as provided by state law.
- (10) limited TCC research that requires regulatory review board oversight (e.g., the IRB) to that performed under a sponsored research agreement.
- (11) limited faculty and staff equity interest in a TCC, and required reduction of equity interest over time until the equity share was less than 25%.
- (12) required that the PI (oversight manager) of TCC-sponsored research projects not be the faculty member if that research involved humans or veterinary clinical trials involving the use of animals. With appropriate oversight, such research may have been conducted.
- (13) required contracts to give full publication rights and cost recoveries to the university, and gave the office of research the right to approve or disapprove exceptions.
- (14) bound faculty and staff participants in TCCs to the IPPC policies and claimed university ownership of new technology developed by the TCC as a result of faculty or staff research.

The new 07 rule is entitled “Rules governing faculty, staff, and student participation in companies commercializing university research” and consists of 8 paragraphs. It was modeled on the 3335-13-08 rule, “Research misconduct.”

- (A) is entitled “Objectives” and has four subsections.
 - (1) is a streamlined version of the original paragraph (A).
 - (2) defines a UTCC, which is a revision of the original paragraph (B)(1). A new addition, at the request of TCO, is the specification that 5% of equity interest is the threshold for which university-affiliate UTCCs must go through the UTCC process.
 - (3) is a streamlined version of the original paragraph (F)(1).
 - (4) [new] specifies that for equity interests of less than 5%, faculty-owned commercialization companies do not have to go through the UTCC process.
- (B) is entitled “Jurisdiction” and consists of 3 sections.
 - (1) is a streamlined version of the original paragraph (B)(2).
 - (2) was originally (C)(1).
 - (3) was originally (C)(2).
- (C) is entitled “Administration” and consists of 6 subsections.
 - (1) [new] binds faculty, staff and students to university policies, and makes use of the first sentence of the original paragraph (G)(14) that references the IPPC policy.
 - (2) designates the principles involved in the approval of the UTCC and its activities and how UTCC activities will be deemed acceptable. This is derived from paragraphs (D)(1,2) and (E)(1) of the original rule. It contains 3 subsections.

- (a) requires formal consulting and COI management plans and is drawn from paragraph (F)(2,3).
 - (b) [new] lists some of the most important policies that may bear on the development of and participation in a UTCC.
 - (c) mentions formal agreements.
 - (3) authorizes the technology transfer oversight committee's role in approval and oversight. This was originally paragraph (B)(3).
 - (4) requires a conflicts of interest administrator and was originally paragraph (B)(4).
 - (5) [new] requires UTCC participants to disclose potential conflicts of interest.
 - (6) streamlines the original paragraph (D).
- (D) is entitled "Approval process for university technology commercialization companies" and consists of 6 subsections. These subsections contain much of the material that was originally paragraph (E).
 - (1,2) were originally paragraphs (E)(1,2).
 - (3) is a revision of (E)(3). It removes from faculty the ability to negotiate between the UTCC and the university. The original language was less restrictive.
 - (4) streamlines the original paragraph (E)(6).
 - (5) streamlines and clarifies the original paragraph (E)(7).
 - (6) is the original paragraph E(8).
- (E) is entitled "Responsibilities to the university" and consists of 3 subsections.
 - (1) is a streamlined version of (F)(1,2).
 - (2) is a streamlined version of (F)(3).
 - (3) is new, and restricts student employee activities in a way parallel to (E)(1,2).
- (F) is entitled "Conflict of interest management standards" and consists of 14 subsections. Much of this paragraph is dictated by the Ohio Revised Code, and is very similar to the original paragraph (G) of the same title. Only differences in the subsections are noted below.
 - The need for a sponsored research agreement mentioned in the original section (G)(5) was moved to (F)(7).
 - The language in the original (G)(7) was changed in (F)(6) to reflect possible sources of undue influence as defined in the new sexual harassment policy.
 - The original restrictions forbidding faculty not involved in technology development or commercialization from investing in UTCCs was relaxed in accordance with recent changes to the Ohio Revised Code, but only if there are no sources of undue influence and all university policies are in force.
 - The original paragraph (G)(11) was deleted. This paragraph limited the equity interest to 25%. This limit, which did not appear in the Model Rules, was an attempt to avoid conflict of commitment via equity interest. It was legally unenforceable and ran counter to the Ohio Revised Code.

On April 7, Faculty Council voted to send the two rules to the Senate for approval. They were presented to the Senate on April 21. A floor amendment to the 06 rule was proposed that

concerned ownership of “traditional” scholarly work. This amendment had not been approved by the IPPC committee and Senate voted to postpone it, along with the 06 rule. The 07 rule was approved and sent to the Board of Trustees.

Outstanding Issues

In addition to the revisions above, several issues remain to be resolved in the 2016-2017 academic year.

The 3335-13-06 rule. This rule may need to be revised in light of the floor amendments proposed on April 21. There were two such amendments, one adding copyright ownership rights for faculty, and the other adding the words “and initiate” to paragraph (C). Problems created by these amendments include:

- The issue of copyright ownership that has been a major sticking point of the new IPPC policy and it has proved to be extremely complex. All stakeholders (IPPC, OLA, and TCO) are firmly committed to faculty and staff maintaining the copyrights to their traditional scholarly work. Given the extensive amount of work the IPPC committee has put into trying to resolve exactly the issue that is the subject of the proposed amendment, the amendment seems to undermine the committee’s efforts to negotiate ownership rights to nontraditional scholarship. Certainly the amendment will constrain the committee’s future ability to negotiate compromise solutions that protect everyone, including staff who are currently excluded from the language of the amendment.
- Adding the words “and initiate” to paragraph (C) would change the rule to read “The IPPC committee shall review and initiate all changes to the policy.” That would mean that no other stakeholders could initiate changes to the policy, including the Board of Trustees. This is dangerous language that, in the absence of a definition of “initiate,” means that no other interested parties could propose revisions to the policy, as is the case with other policies. The amendment may be based on a misunderstanding that only a select number of higher administrators, which came from a page on the OUI’s web site. This page was an attempt to describe the policy process, and carried no weight of policy, bylaw or rule. It was revised to eliminate any confusion, and now reads, “Proposals for new policies are made using the Policy Proposal form. New policies or updates to current policies can be initiated by contacting the Responsible Office leader or policy coordinator, the policy and training director, or by emailingpolicies@osu.edu.” Stakeholders have never before been closed out of the policy revision process.

The 3335-5-04 rule. This rule concerns disciplinary procedures and due process for faculty accused of misconduct must be examined in light of the university’s new sexual misconduct policy. Faculty Council struck an ad hoc committee to conduct this investigation, and the committee’s charge is to produce a report with recommendations in September of 2016. This investigation was triggered by a request from Faculty Hearing to insert a faculty member’s right to appeal a sanction after such a sanction has been imposed by the provost, regardless of the severity of that sanction. The Rules committee (and the Steering Committee of 2014-2015) believed that such a right to appeal fundamentally changed the role of the provost and therefore

that the request could not be accommodated by a simple rule revision. The Rules committee prepared a position statement for Steering that is appended to this report.

The rule must be revised to expand the communication standards to permit email notifications. These revisions have been postponed to go forward with any changes that may result from the ad hoc committee's recommendations in September 2016.

The 3335-5-48.13 rule. There is an outstanding question concerning the government affairs committee rule . This rule establishes a committee that has been eliminated, and the rule itself should have been rescinded.

Rules 3335-7-11(A) and 3335-7-37. These rules concern participation in faculty governance by clinical faculty. A potential conflict between these rules was brought up by Dick Dietrich of the Fiscal committee. Rule 3335-7-37 states that governance rights within a tenure-initiating unit will be determine by a vote of the faculty within that unit. Rule 3335-7-11(A) states that a college or academic unit that appoints clinical faculty determines the level of participation in governance by clinical faculty. The question posed is whether a college-level decision to include clinical faculty in governance can be trumped by the tenure-initiating unit.

Appendix

Position Statement on the 04 Process

The 04 process is used to determine the level of sanction against faculty which are guilty of (grave) misconduct, research and financial misconduct. This includes bullying and hostile behavior as well as falsifying data and financial fraud. The purpose of the procedure is not only to sanction faculty but also to protect the harmed party (e.g., students, staff, other faculty, and the academic unit).

The procedure starts with a complaint by either students, staff or other faculty. Before the 04 process is used the department chair and/or central HR will conduct an investigation by meeting with accused, complainant and others as warranted. If the department chair decides that there is a disciplinary issue and it cannot be dealt with differently (annual review, corrective action plan etc.), s/he will request that the dean will open an 04 process. The dean will review the materials concerning the charge and decide whether the request has merit. Usually this includes a meeting with the accused. If so, the dean will charge the college investigation committee (04; CIC) to investigate the charge and recommend a sanction if the charge merits it.

The CIC will review the materials, interview the accused, complainant and others as appropriate and decide whether or not there is misconduct, to what degree and suggests sanctions. If the finding is no misconduct, the committee will not recommend a sanction. If the finding is misconduct, the dean can give a lesser sanction. If the finding is grave misconduct, research and financial conduct, the dean can increase the sanction. The dean passes on the decision to the provost who will review the materials, usually will meet with the accused, and will either confirm or modify the sanction. At this point at least 4 parties (or 5 if HR was involved) have reviewed the case and decided that the behavior in question merits disciplinary action. Given the thoroughness of the procedure, we state that:

1. No one or two committees can request or reasonably expect a rule change that fundamentally changes the role of the provost in 04 hearings without a discussion that includes the faculty, the provost and the president.
2. Adding an unrestricted appeal process after the CIC has performed an investigation, found evidence of misconduct and recommended a sanction, and after the dean has agreed that a sanction is appropriate, not only restricts the ability of the provost to end the misconduct process, but also leaves faculty subject to and affected by the misconduct without relief for the duration of the appeal process.
3. It is not the case that respondents undergoing the 04 procedure are not permitted counsel or to present evidence in their defense to the CIC. The presence of counsel, the ability of counsel to speak on behalf of the respondents, the ability of counsel to question witnesses and the ability of the respondents to call witnesses in their defense is encouraged by OAA and entirely permissible. If there is a change to be made to the 04 rule, it is perhaps to make these facts clear.

4. The fact that the members of the CIC are appointed by the dean whereas the members of Faculty Hearing are appointed by Steering (a committee that includes the dean and the provost) does not imply that the CIC is biased in favor of the administration and, by inference, against respondents. To suggest otherwise impugns the integrity of the faculty who have agreed to serve on the CIC, which is a standing committee and is not empaneled only in response to particular cases.
5. With respect to possible revision of paragraph (G)(3) of the rule, use of the term “increases” instead of “modifies” when discussing sanctions is problematic, as there is no clear ranking of sanctions in terms of relative onerousness. Therefore it may be best to leave the language as “modifies.”
6. There is no connection between the federally-mandated Title IX sexual misconduct investigation procedures and the 04 rule, except that a report from HR can trigger the 04 process. To suggest that the HR procedures trump or replace the due process procedures outlined in the rule is based on a misunderstanding. Faculty leaders should work with the OHR and OAA to ensure that all faculty understand their rights under the 04 rule. While the 04 rule may need to be revised to accomplish this, such revisions should not involve a right to appeal to Faculty Hearing except under the provisions already stated in the 04 rule.