

Examples of Remedies to Procedural Violations

Direct award of tenure, by-pass 7th year reconsideration

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Directing that a 7th year de novo consideration must happen

UK providing temporary employment to terminated faculty member during consideration of case

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The Senate Advisory Committee on Privilege and Tenure (SACPT) is a committee of the University Senate. The charge to the SACPT includes, in part,

“the SACPT will submit to the President its analysis of the alleged violations and will recommend to the President what **commensurate remedial action**, if any, ought to be taken.” (emphasis added here).

Below are quotations from the SACPT letters in four case examples, involving three different UK Presidents, in which (1) the commensurate remedy recommended by the SACPT to the President was to move the case forward, rather than ‘send it back down,’ (2) the President received the recommendation as a “commensurate” recommendation authorized for the SACPT under the SACPT charge, and (3) the President adopted the SACPT recommendation. A fifth case involving a fourth UK President is then presented.

J49D

Faculty member denied tenure complained that there were no published departmental rules of procedure for promotion and tenure, leading to a practice in which the tenured faculty members had not, and were unaware that they were entitled to, read the letters submitted by specialists external to the University, which in the faculty member’s case were generally supportive. Faculty member also stated he “had no warning that anything was wrong until he was notified of the denial of tenure.” Faculty member also complained that “when Dean _____ rejected him for promotion, he was required by the ARS to notify him [the faculty member] of this and his dossier should not have forwarded with a negative recommendation to Vice Chancellor _____.” Faculty member also complained that one paragraph in the Area Committee letter stated the vote was 6-0 in the faculty member’s favor, while a second paragraph stated the vote was 5-1. The faculty member “complains explicitly... and implicitly that he was denied tenure not because of any deficiencies his research, teaching or service to the university, but because of problems of interpersonal relationships...”

The SACPT determined that “The departmental rules, as we have seen them, are not very specific (merely saying that the department will follow university procedures, which in turn do not set out departmental consideration in detail)...no tenured members of the faculty saw the letters evaluating his scholarship sent by outside referees...The Committee believes that it lessens the usefulness of soliciting outside evaluations if they are not shared with the tenured faculty ... these evaluations should be shared with all the decision-makers. We... recommend to you that the ARs be changed to insure that such letters are shared with the tenured faculty.” [In separate letters, the SACPT continued “ It would not surprise us if a candidate denied promotion or tenure under the system that exists in some units filed a suit against the university on grounds that the UK was violating the spirit of its own rules and/or that the withholding of the outside letters violated due process of law”]. On that aspect that the faculty member had not been warned during prior evaluations that performance was wanting, the SACPT concluded “Certainly the paper record supports this charge. He received a rating of 4.0 (the College’s highest) on all annual merit evaluations preceding the tenure decision. We believe this constitutes irresponsible behavior on the part of his chair and dean.” In addition “We find [the Vice Chancellor’s] acceptance of the file to be a violation of the university’s procedures ... the failure to notify [the faculty member] of the negative decision earlier may have led him to believe a positive recommendation had been forwarded and thus he did not look for another position. In this sense, the violation of standard procedure may have had a negative impact on [the faculty member’s] career.” In addition, when the Area Committee chairperson “was writing the letters for all persons considered by the committee that day [he]inadvertently left a paragraph from a letter concerning another candidate in the letter...This could have weakened the impression about how strongly the Committee

supported granting ... promotion and tenure.” On the complaint that personality issues were the real motivation of denial of tenure, the majority of the SACPT members “find this last complaint accurate ... At any rate [the faculty member’s] division of effort has been roughly 85% research and 15% teaching over his probationary period, so the majority believes it is difficult to sustain a case that service deficiencies should bear heavily in the tenure decision ... Some of the letter writers are incensed by his criticisms of the University and the Department (although most of their knowledge on this is hearsay). While not particularly admirable, if true, [the faculty member] certainly has a right to express his opinions about UK and the _____ Department. To the extent that this is a factor in the decision, it is cognizable by the Privilege and Tenure Committee. The justification of their votes [on] personality-type criteria does not, in the Committee’s majority judgment, warrant denial of tenure.... Thus, the Committee majority believes that [the faculty member] has been denied promotion and tenure based upon inappropriate criteria. Nor does the “Balance and Intellectual Attainment” paragraph in the discussion of promotion and tenure criteria in AR II 1.0.1, p. V-2, make this a criterion. The majority further notes that, as discussed above, [the faculty member] consistently received the highest possible merit ratings each year on his performance from the department chair and college dean. UK’s rating system is intended to serve as a diagnostic instrument, especially for untenured faculty. The majority believes that if it was used as such, this is clear evidence that the negative decision in [this] case has little relationship to the performance of his duties. If it was not used as such in this case, it is evidence that [the faculty member] is a victim of irresponsible behavior on the part of his chair and dean. What is the appropriate remedy? The Committee majority feels there is little point in sending’s dossier through a reconsideration process. No information of significance is missing from the present one. If anything, this course of action would simply invite those colleagues opposed to [him] to expand on their negative perceptions of his personality, to argue at greater length that his presence is more dysfunctional to the department than they did in their original letters. Thus, we feel that the most appropriate action is to request that you reconsider your decision in this case, taking into consideration our findings and conclusions, and, if you agree with us, act to promote [the candidate] to the rank of associate professor with tenure...”

B60M

Faculty member in regular title series was provided continuous DOE of 45% teaching, 25% research, 30% administration. In consideration for promotion and tenure, Area Committee recommended negatively to Chancellor, on account of ‘thin research record.’ However, Area Committee also wrote it had been “grossly unfair” to fail to put the individual originally in Special Title Series position, in view of heavy administrative assignment, and that “[w]e earnestly hope that some arrangement can be made to assure that justice is done in this case.” Chancellor in response met with Area Committee and “asked it to write [the Chancellor] another letter,” on account of the Chancellor’s characterization that the Area Committee’s first letter contained “dangerous” language. Chancellor asserted that Area Committee “went beyond its function” in making the additional comments quoted above. Area Committee complied to write a second, more strongly negative letter, and characterizing the teaching load as only “moderate.” SACPT agreed that it was inaccurate to characterize the teaching load as moderate “in comparison to other faculty in his College.” SACPT interpreted “There did not appear to be any procedural reasons for the Chancellor to ask for a new letter. Rather [the Chancellor] found the substance of the letter itself disturbing. So far as we know, no rules prohibit the Chancellor from strongly suggesting to an area committee that it write a new letter along certain lines. But we think that doing this defeats the purpose of having area committees give independent advice to the chancellors. Their advice is not independent or of much utility if its essential nature is preordained by the Chancellor. There are no regulations that constrain an Area Committee from communicating its belief that the university would be best served by retaining a candidate even though a strict reading of the record does not merit a positive recommendation. Indeed, area committees do this on occasion.” On the aspect of Regular Title vs. Special Title, “[t]his Committee believes that [the individual] has been ‘screwed’ by missteps and lapses in the system over which he had virtually no control. If there is a culprit, it is [the former dean] who apparently insisted that new members of the College ... be appointed into the regular title series regardless of their duties... it is unfair for the university to hire a person... charge him primarily with the task of building an important undergraduate program at one third or more of his time and yet put him in the Regular Title Series....Nothing would be gained by having this case reconsidered...it would be pointless to recommend that [the Chancellor] reconsider his file based on the first letter...Thus we recommend that you act directly... The Privilege and Tenure Advisory Committee recommends that you grant promotion and tenure to [the individual] in a Special Title Series line that accurately reflects his duties and skills.”

U58M

Where Special Title Series faculty member was denied promotion and tenure, the SACPT decided “that very clear cut violations have occurred in this case...First, no official job description had been provided to [the faculty member] upon her hire at this University, and second, no Special Title Series criteria for the evaluation for promotion and tenure was ever approved by the Academic Area Committee nor presented to [the faculty member], (AR II-1.0-1 9/20/89, pp VII-1). The lack of clear guidelines for promotion and tenure in the Special Title Series alone demonstrates a violation of procedure, and thus serves as grounds for appeal. In consideration of both issues, the committee feels that [the faculty member] was not afforded the appropriate information which would have led her to a successful bid for promotion with tenure. It is reasonable to expect new faculty in either Special Title or Regular Title Series appointments be fully informed of the guidelines and criteria for evaluation as well as for promotion with tenure. It is the committee’s recommendation that the case be reopened at the Chancellor’s level for reconsideration.” The President then directed the Chancellor to “reconsider” the case. The Chancellor, writing in March, then recommended the individual be granted promotion and tenure retroactive to the previous July 1, citing the findings of the SACPT. President concurred and tenure with promotion was conferred.

L78T

Where the Regular Title Series Assistant Professor had identified violations of University and college procedure, and errors of fact in the Dean’s letter, the SACPT recommended to the President

“We are concerned about three potential violations of procedures raised by the candidate, explained in more detail in the following. Our recommendation is that you return the dossier to Provost [...], and request that he reconsider his decision, taking into account these procedural issues and several potential errors in Dean [...]’s letter...”

“We understand that tenure and promotion cases are sometimes complicated. Given the procedural concerns described in this letter, combined with the unanimously favorable recommendations of the external reviewers, department faculty, department chair, and University Area Advisory Committee, our primary recommendation is to return the dossier to Provost [...] and encourage him to review his decision again, in light of the concerns raised by this letter.

“Should he remain convinced that the denial of tenure should stand, we encourage Provost [...] and Dean [...] to extend Professor [...]’s terminal contract by one additional year. We feel strongly that she deserved some advance warning that her tenure case may not proceed smoothly.”

L64P

[In this appeal case, the SACPT recommended to the President that the appropriate remedy was to directly confer tenure. The President received the SACPT recommendation, but made the decision to direct a 7th year de novo review. Upon again being denied promotion/tenure, the faculty member was informed by the SACPT that a remaining remedial process was appeal to the Board of Trustees pursuant to GR I.F that states in part “All faculty members and staff employees shall be entitled to appeal any decision affecting terms of their employment by the University through regularly established channels.”

SACPT to President: “The Committee unanimously recommends that Assistant Professor _____ be promoted to the rank of Associate Professor with Tenure as the only appropriate remedy for the procedural errors discussed here.”

President to SACPT Chair “Thank you for your letter of ____ concerning the Senate Advisory Committee on Privilege and Tenure’s recommendation for the promotion and tenure case of _____ ... My review of the dossier, the evaluation process, and your committee’s advice leads me to believe that the proper course of action at this point would be for the Provost to ask the Dean _____ to initiate a seventh year review that would involve ...” [Note: during which seventh year review the faculty member is on a terminal year reappointment].

SACPT to President [re: second procedural appeal by faculty member after exercise of de novo 7th year review]: “... we wish to convey strongly that this [the 7th year procedural violations] represents a most serious de facto procedural violation that apparently impacted negatively on the review of Dr. ____’s credentials during the seventh year review. The members of the SACPT recommend that you re-appoint Dr. ____ to the faculty at the University of Kentucky as Associate Professor with tenure.”

SACPT to faculty member [after President's denial of promotion/tenure]: "... the Governing Regulations at GR XI.H [today GR I.F] provide a route of appeal ... Because the President is the highest administrative officer and the President's decision is the most recent decision, the next higher step is to the Board ... the Board's Governing Regulations prescribe ... that the Board's Executive Committee shall serve as the hearing committee in such a case."

Faculty member to Chair of Board of Trustees: "The purpose of this letter is to initiate an Appeal to the Board of Trustees regarding my Promotion to Associate Professor with Tenure..."

UK General Counsel to Faculty member: "Please be advised that your appeal to the University of Kentucky Board of Trustees stated in your [date] letter will be submitted to the Board of Trustees Executive Committee, chaired by ____ on [date] for their deliberation."

UK General Counsel to Faculty member: "The Executive Committee of the Board of Trustees will meet on [date] at the conclusion of the full Board meeting... The committee members will be given the full record upon which your appeal is based... The Executive Committee intends to go into closed session to discuss your appeal... The deliberation phase of the Executive Committee will take place at their [later date] meeting, again in closed session ..."

[**Note:** just before the scheduled first meeting of the Executive Committee, the faculty member met with the Associate Provost for Academic Affairs. The meeting of the Executive Committee was then cancelled].

Subsequent Board PR2:

"[Name], College of ____, from Assistant Professor to Associate Professor (without tenure) 7/1/xx through 06/30/xx" [back-dated to start the beginning of the 7th year terminal appointment]

Improper consideration by advisory entity set aside before evaluation of remainder of documentation

G42D

Where the college advisory committee's recommendation to the Dean "did not accurately reflect certain aspects of your promotion file", the SACPT found it sufficient that the Dean "questioned the [college committee] recommendation, afterward sought clarification from the chairman of that committee, and, based on the chairman's response, set it aside as useful input to the decision process."

A44F

President accepted SACPT's recommendation that consideration of promotion to full professor in the special title series be made by a special Ad Hoc Advisory Committee, in which the dossier would include ONLY updated C.V. with supporting materials provided by candidate, department faculty letters, external specialist letters, department chairperson's letter ("with the stipulation that the memorandum from _____ to _____ dated ____, which is mentioned in the Department Chairperson's letter, be considered as not pertinent)."

Explanation of appeal outcome placed into dossier prior to dossier reconsideration

K39F

SACPT committee recommended that the faculty member be provided "an opportunity to include in her file a statement concerning possible influences of knowledge of the initial negative evaluation of her file on a subsequent re-evaluation of her file containing a corrected teaching record." President confirmed that the faculty member's "memorandum to Dean ... contains such a statement and that this memorandum was included in her file prior to re-evaluation of her file and credentials by the concerned tenured faculty members."

F51R

When an associate Professor who was denied promotion to full professor appealed, the SACPT determined that the "most glaring problem was the failure of the area committee to review [his] accomplishments in the context of his DOE and position description as an Extension State Specialist in ____. Dr. ____'s DOE was comprised of 100% Service every year since his initial appointment. Expectations in such an appointment do not include basic research, grants to secure external funding or publication in referred journals. Dr. ____'s position description includes ... no expectation of activities usually associated with promotion of faculty primarily involved in research and teaching. Proposals for external funding developed by [the faculty

member] were stopped at the Dean's level. In conclusion, the Senate Advisory Committee concurred with [the faculty member] that his promotion materials had been inadequately, and in some aspects, inaccurately reviewed, and suggests that you, as President of the University, order a de novo review by the current extension area advisory committee. Addenda to the letters from [the faculty member's] department chair and College Dean should be forwarded to the area committee which clearly delineate the unique expectations of his position and DOE." President adopted this recommendation, and upon de novo review as per above the individual was promoted to full professor.

Directing that a 7th year de novo consideration must happen C52T

C52T

Upon appeal by assistant professor denied promotion and tenure, SACPT determined there existed "1. Lack of written criteria or procedures for evaluation and promotion at either departmental or college level. 2. Lack of information about the existence and location of Governing Regulations, Administrative Regulations, and Senate Rules at any time during six years of employment. 3. No written evidence of consultation with tenured faculty regarding two and four year reviews. ([department chair] stated, however, that he met with a three-person committee of full professor for this purpose). 4. 19__ Annual Performance Review completed after notification of tenure decision, was signed by [faculty member] prior to the addition of written comments by Dean _____. Dean _____'s comments are undated. ([department chair] stated that it is usual College procedure for chair and faculty member to review and sign, then forward to the Dean for other comments). 5. Tenured faculty were asked to write evaluative letters regarding promotion prior to receipt of outside review letters, thus had no access to this essential data." SACPT concluded "Considering the cumulative effects of these irregularities, the committee requests that you carefully examine his appeal materials and take actions necessary to rectify the effect of these errors. Since the review of his promotion was stopped at the Dean's level, it might be appropriate to forward his materials to the area advisory committee for review."

UK providing temporary employment to terminated faculty member during consideration of case

B30F

Based on SACPT report, President offers Visiting Lecturer position to faculty member "to provide you some accommodation and to permit you more adequate opportunity to secure other employment."

L43L

Where an assistant professor in the special title series had been denied promotion and tenure in both 6th year and 7th year reviews, on the basis of insufficient "professional development and research", when the faculty member's D.O.E. averaged 85% teaching and 15% professional development and research," the SACPT determined that the individual "was primarily a teacher, a fact which the University annually has agreed to in writing. Since such agreements should not work to [the individual's] detriment, it follows that the promotion criteria must be applied in a manner consistent with the division of effort... The SACPT committee further determined that "section VI.B.2 of the Administrative Regulations ... imply clearly that advancement through the ranks of an individual whose responsibilities do not include research or creative work should be based on criteria carefully crafted to reflect specific duties and expected levels of performance. The Medical Center Special Title Series of 1970 is a two page document which provided criteria for all Medical Center personnel and which, in its implementation from 1970 to 1980, freed the individual units from the tasks of devising appointment and promotion criteria for each new special title series appointment. Predictably, its criteria are brief and general and we are unconvinced that they reasonably substitute for the individual criteria called for in the Administrative Regulations. Indeed, the Medical Center itself has come to this conclusion, at least partially. We are informed that some departments have consistently provided unique descriptions for special title positions and, since 1980, certain other units have been directed to implement each new special title appointment with individual criteria as required in the Administrative Regulations. It is our conclusion that an umbrella title series which attempts to encompass an entire college, where duties may vary widely, is a contradiction; there is nothing special about it, it simply becomes a parallel series. Thus, we find ourselves driven to the conclusion that the Administrative Regulations, notwithstanding long practice to the contrary in the Medical Center and possibly elsewhere, mean what they say: each special title position must be described by a unique document and criteria." The SACPT committee recommended that the individual was entitled to a

new dossier being formed at the department level, with new evaluation/recommendation letters from all internal parties, that the dossier be forwarded through the evaluation process to the Area Committee, which will receive both the old and new dossier, and that all parties will be instructed to conduct their evaluations guided by the D.O.E. assigned to the faculty member. President agreed to the recommendations, and added that the individual will be placed in full time, nonfaculty University employment in a different college until the process completes with the President's final decision on the promotion/tenure proposal.