

Report of the Senate Committee on the Faculty and the Administration (SCOA)

The Senate Committee on Faculty and the Administration “oversees and advises the Executive Committee on matters relating to the Faculty’s interface with the University’s administration, including policies and procedures relating to the University’s structure, the conditions of faculty employment (such as personnel benefits) and information. In general the Committee deals with the matters covered by the following sections of the *University’s Handbook for Faculty and Academic Administrators*: I.A.-D., G.-H.1., I.-K., II.E., III., V., VI.

For 2013-2014, the Committee was primarily charged with making recommendations for the review and oversight of master’s degree programs and with reviewing faculty ownership, intellectual property and labor issues relating to the University Conflict of Interest Policy and its application to on-line teaching. The committee also assisted in reviewing the revised Faculty Grievance Procedures and in monitoring the efforts of the Vice Provost of Research to reduce the regulatory burden on faculty.

Oversight of Master’s Programs

The number of master’s programs varies considerably both from school to school and within schools over time. SCOA examined materials on the number of MA programs, the criteria for their establishment and maintenance and any extant procedures for oversight. We confirmed that these continue to vary widely.

SCOA recommends that all Schools with master’s degree programs have procedures for oversight in place. These should occur at regular, published intervals and be conducted according to published criteria.

Noting the disparity in procedures and quality of oversight among the schools, SCOA also encourages the development of criteria for best practices in the conduct and oversight of master’s degree programs. In pursuit of this, we appended the system of review developed by the School of Engineering & Applied Sciences, which is exemplary. [Appendix B]

Master’s degree programs differ significantly. Best practices should therefore be formulated by each school and department according to their pedagogical and disciplinary goals. There are, however, core principles that should guide all master’s programs.

SCOA encourages schools and departments to develop and publish their own criteria for best practices in their MA programs. These should include:

- 1) specific admissions criteria
- 2) faculty oversight of curriculum
- 3) career mentoring
- 4) periodic program review

Massive Open Online Courses and University Policy on Conflict of Interest and Labor

SCOA’s primary task for this year was an examination of issues concerning conflict of interest, intellectual property rights and labor practices that arose in connection with massive open online courses (MOOCs). The statement issued by Provost Price and Professor Rock of the Law faculty and published For Comment in *Almanac* May 7, 2013 raised a number of concerns among the faculty. Over the course of the last two years, SCOA and the Tri-Chairs have discussed these issues among themselves, with their colleagues, and with faculty members of the Law faculty. We are especially grateful for Professor Christopher Yoo’s counsel.

MOOCs present a special case with regard to provisions governing intellectual property and conflict of interest. MOOCs in particular, and on-line forms of teaching more generally, are undergoing rapid change, pedagogically and in law.¹ At present, the construction of a MOOC at the University of Pennsylvania is done under a work for hire contract with *Coursera* and the University of Pennsylvania, rather than by the provisions of the *Faculty Handbook*. *Coursera* contracts are negotiated individually

and vary in their provisions. Faculty should therefore consult with their colleagues to determine customary arrangements and appropriate rates of remuneration. Faculty should also be conscious of the disparity between *Coursera* contracts and provisions governing intellectual property rights in the *Faculty Handbook*.² The faculty member contracting with *Coursera* is paid for “services performed and all of the rights you grant under this Agreement,”³ “The audio and video recordings of lectures included in the course are owned by the University” and the University has “the legal right to distribute” the course.⁴ The faculty member retains “the copyright interest in the New Course Content” created or authored for the course. Faculty have expressed concerns that *Coursera* could edit, modify or combine lectures and course materials with other elements in ways that would be inaccurate, misleading or objectionable to the faculty author. We advise adding provisions to the *Coursera* contract addressing this concern for reputational and academic accuracy. In addition, SCOA has significant concerns relating to the relicensing of online courses. We recommend the addition of language to the *Coursera* contract to the effect that “The University agrees that it will defer to the faculty member’s reasonable objections to any proposed relicensing of online courses.”

The contractual arrangements between the University, faculty and *Coursera* MOOCs are governed under a regime distinct from that which governs intellectual property and conflict of interest issues for the faculty of the University of Pennsylvania. The contractual status of the faculty is governed, in the absence of explicit contracts, by the *Faculty Handbook*, which remains the authoritative source for the rights and obligations of the faculty, and by customary practice in the academy. These are not superseded by the interpretations offered in the May 7, 2013 *Almanac*. The faculty retain the intellectual property rights secured in the *Faculty Handbook* and in the *Research Investigators’ Handbook*, cited below.⁵ The faculty also retain the ordinary and customary rights that prevail in academic practice. These include the right to participate in academic activities outside the University including conferences and lectures for a period not to exceed 1 in 7 days during the school year and freely in the summer where their customary obligations permit this, and to conduct reading courses, among other practices. The faculty willingly acknowledge their duty to the University as their primary obligation and do not seek to compete with the University. The faculty affirm the conflict of interest provisions of the *Faculty Handbook*, which codifies the requirements and expectations of the University and has been accepted as authoritative by faculty and administration.

Faculty Grievance Procedures

SCOA reviewed the proposed revisions to the Faculty Grievance procedures and raised certain concerns which we forwarded to the Tri-Chairs to be passed along to the Ad hoc committee tasked with drafting the revision. The most important of these concerned securing rights of the faculty in the case of a grievance. In particular, SCOA believed that the grievant should have the same access to recordings of the proceedings as the Provost (given explicitly in Section IVb). To make the process more equitable and ensure confidentiality, the committee recommended that the recording be accessible to both parties on an equal basis.

Report from Vice Provost for Research Dawn Bonnell

Dawn Bonnell continued the tradition of clear, concise and substantive reports the committee saw under her predecessor Steve Fluharty, now Dean of SAS. We as a committee appreciated the work Vice Provost Bon-

1 “Massive Open Online Courses (MOOCs): Intellectual Property and Related Issues”, Megan Pierson, Robert Terrell, Madelyn Wessel; Section 5G National Association of College and University Attorneys, June 19-22, 2013. “Copyright Challenges in a MOOC Environment” Educause Brief, *educause.edu*; “Solving the Problem of Faculty Ownership” Faculty Focus interview with Dr. Kim Kelley, June 14, 2008, “Former AUS professors threaten litigation over online course ownership”, Kaustuv Basu, *insidehighered.com* March 14, 2012,

2 On these issues see especially II.E.10 Conflict of Interest Policy for Faculty Members (1979 *Handbook for Faculty and Administration*; revised, 1983, 1991.) See also III.D. Policy Relating to Copyrights and Commitment of Effort for Faculty (1977 *Research Investigator’s Handbook*; revised 1978 ; revised Resolution of the Trustees February 16, 2001 and Offices of the Provost and Faculty Senate, *Almanac* February 27, 2014)

3 Online Course Agreement, 2012-06-21 Online Course Agreement–*Coursera* v5, p.2 3.1

4 Ibid. “Draft Summary of Terms” attached to Online Course Agreement.

5 Ibid, note 2 above.

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nell is doing to reduce the regulatory burden on faculty. We encourage this effort in the years to come, and suggest that SCOA continue oversight of this process. The Penn Center for Innovation appears to be an excellent vehicle for enhancing our connections to industry and for supporting creative work at Penn that may have commercial value. With the anticipated challenge of decreasing federal funds, this appears to be an excellent place to focus some of efforts of this office of research. We look forward to the opening of the Penn Center for Innovation and share Vice Provost Bonnell's hopes for its success.

Recommended charges to SCOA 2014-2015

1. We recommend that our successors on this committee retain a watching brief on issues of conflict of interest and intellectual property which may reappear in light of technological or institutional developments in the academic environment.

2. The historic turnover of Deans in several schools gives the SCOA the opportunity to review the procedures and practices governing the appointment and reappointment of Deans.

SCOA Membership, 2013-2014:

Sigal Ben-Porath, Graduate School of Education
Gregory Bisson, Perelman School of Medicine/
Infectious Diseases
Ken Drobatz, School of Veterinary Medicine
Jonathan Korostoff, School of Dental Medicine
Anne Norton, School of Arts & Sciences/Political Science, Chair
Talid Sinno, School of Engineering & Applied Science/MEAM, CBE
R. Polk Wagner, Law School
Ex Officio Members:
Dwight Jaggard, School of Engineering & Applied Science/Electrical & Systems, *Senate Chair*
Claire Finkelstein, Law School, *Senate Chair-Elect*

Faculty Senate Grievance Commission Annual Report

April 2014

The Faculty Senate Grievance Commission of the University of Pennsylvania is an independent committee consisting of three faculty members appointed by the Faculty Senate Executive Committee. This Commission is available to members of the Penn faculty and academic support staff who allege they have been subject to action that is contrary to University procedures, policies and/or regulations, that is discriminatory or that is arbitrary.

During the Academic Year 2013-2014, the commission was composed of Robert Hollebeek (Physics and Astronomy, Past Chair), Martha A.Q. Curley (Nursing, Chair) and Rogers Smith (Political Science, Chair Elect). During the year, the Commission was approached by two members of the faculty, both had been denied either promotion or a continued appointment.

In each case, the individuals had several initial discussions with the immediate past chair and the current chair of the commission about the grievance process, the circumstances of the case, discussions about clarifying the issues that might be grounds for a grievance and discussions about the procedures for submitting a formal grievance letter. In both cases the Commission chair pursued additional information from the potential grievant's department or dean.

In both cases, the commission as a whole reviewed the case in detail, each member reaching an independent conclusion about the merits. In both cases, the chair consulted the commission for a consensus after reaching a decision about whether the cases should result in a hearing panel. Neither case was forwarded to a hearing. No cases remain outstanding for consideration in the coming year.

During the year, the Commission collectively reviewed the proposed changes to the faculty grievance procedure (section II.E.12 of the *Faculty Handbook*) and provided comments on the prehearing procedures .

—Martha A.Q. Curley, *Grievance Commission Chair, 2013-2014*

Senate Committee on the Economic Status of the Faculty

The 2013-2014 Senate Committee on the Economic Status of the Faculty published the Economic Status of the Faculty, 2012-2013 Report in the May 6, 2014 *Almanac*; an executive summary as well as the full report are available online at www.upenn.edu/almanac/volumes/v60/n33/esf.html

Senate Committee on Academic Freedom and Responsibility

The annual reports of the 2013-2014, 2012-2013 and the 2011-2012 Senate Committee on Academic Freedom and Responsibility will be published in a future issue.