

GEORGE MASON UNIVERSITY
AGENDA FOR THE SPECIAL CALLED MEETING OF THE FACULTY SENATE
FEBRUARY 8, 2012

~~Robinson Hall B113 3:00 – 4:15 p.m.~~ location changed to
JOHNSON CENTER CINEMA 3:00 – 4:15 p.m.

Note: Only business included in the agenda can be transacted at the Special Meeting.

The meeting will be recorded for the purpose of preparing the minutes.
Upon completion of the minutes, the recording will be destroyed.

I. Call to Order

II. New Business

Introduction by Faculty Representatives to the Presidential Search Committee

- 1) More Information: A brief summary of further information about the presidential search that the three senators on the Search Committee can share with the rest of the Senate.
- 2) Question re the Candidates' Response: Were the candidates made aware of the Senate resolution calling for finalists, in keeping with the Faculty Handbook, to come to campus so members of the campus community could meet with them? If so, how did they respond?
- 3) Meeting with the New President: We propose asking President-Elect Cabrera to come to campus during the spring semester for a visit that would include two meetings: a large open meeting with all interested members of the campus community; and an ensuing smaller meeting with the Faculty Senate and the GMU chapter of the AAUP to discuss issues of shared governance.
- 4) Status of the Faculty Handbook: Discussion of the status of the Faculty Handbook after one of its important provisions has been set aside by the BOV and Faculty Senate. Does this open the door for similar violations in the future? What guaranteed rights do Faculty now have re employment and governance?
- 5) Post-Meeting Communications: In light of our discussion, what message(s), if any, should the Senate send to the BOV, President-Elect, and General Faculty?

Attachments (5)

Attachment A: **III. Faculty Handbooks as Enforceable Contracts for Governance Provisions** *AAUP Summary of three court cases involving governance issues*

Attachment B: FROM: "FACULTY HANDBOOKS AS ENFORCEABLE CONTRACTS: A STATE GUIDE" AAUP, 2009 (includes link to AAUP Publication)

Attachment C: AAUP Presidential Search Committee Checklist

Attachment D: Preface to the GMU Faculty Handbook

ATTACHMENT A

III. Faculty Handbooks as Enforceable Contracts for Governance Provisions

Courts are often asked to decide whether faculty handbooks, which include policies, rules, and procedures under which professors work, establish contractual relationships between a professor and an administration. While the issue usually arises in the context of individual breach-of-contract claims in the employment context, sometimes litigation arises between trustees and faculty senates about the legal status of faculty handbooks generally and whether governance provisions are enforceable specifically.

University of Dubuque v. University of Dubuque Faculty Assembly, No. EQCV90784 (Iowa Dist. 1999): The university's board of trustees, apparently in an effort to amend the university's faculty handbook without seeking faculty approval, sued 46 faculty members. The board sought a court order declaring that the faculty handbook used at the university was not a contract, but simply a "formal institutional policy statement." The faculty members argued that the handbook provided for faculty approval of handbook revisions. The trustees argued in state court, where they sought a declaratory judgment, that the faculty handbook was a "guidepost" because, if it were otherwise, the board would be "stymied by the faculty senate." The court noted that the faculty handbook was incorporated into each individual faculty member's letter of appointment. The court further observed that the preamble of the faculty handbook stated that the handbook was "legally binding." Accordingly, the court concluded that the university faculty handbook was "legally binding and enforceable upon both parties." At the same time, the court found that two provisions of the handbook conflicted, and resolved that potential conflict in favor of the trustees. Specifically, one clause provided for modifications of the handbook by the trustees only, and another provision established procedures for faculty approval of handbook revisions. The board claimed victory in the lawsuit, because the court "allow[ed] the Board of Trustees . . . to adopt and incorporate into the Handbook any proposed modification submitted to the Amendment and Revision Committee, regardless of whether the same has been approved by the faculty at large."

Tabbox v. Indiana State University Board of Trustees, Cause No. 84D01-9203-CP-445 (Vigo Superior Court, Indiana, Apr. 1992): Seventy-eight members of the Indiana State University faculty sought a declaratory judgment and permanent injunction against their board for continuing a presidential search and appointing a new president in violation of their faculty handbook, which provided that faculty members serve on the search committee of the university. The court was asked to review not only the specific violation of the presidential search provision of the handbook, but also the larger issue about the legal status of the handbook as a "contract between the Faculty and the University." The parties settled. The settlement agreement did not directly address whether the faculty handbook was enforceable as a contract. Rather, it affirmed that the handbook "provide[s] for meaningful faculty participation in University governance. . . ."

Faculty for Responsible Change v. Visitors of James Madison University, 38 Va. Cir. 159 (Va. Cir. 1995): An association of faculty sued the university for breaching faculty employment contracts by closing some academic programs without having first obtained the recommendation from various faculty bodies, including the faculty senate. The faculty handbook, which was incorporated into individual letters of appointment, provided that JMU faculty had the "primary role" in the development, modification and review of the curriculum, while the president of JMU had the "final authority and responsibility" for curricular matters. The administration announced that it was merging one of its colleges with another, and that it was closing a number of academic programs. The administration announced these changes "without obtaining the recommendations of the University Council,

the Undergraduate Curriculum Council, the Graduate Council, or the Faculty Senate." The court noted that "FRC does not allege that its claim is formally supported by the JMU faculty as a political body." The court found no breach of contract. The court reviewed the faculty handbook language, and noted that the dictionary definition of "recommendation" does not require a recipient to be "bound to follow it." The court also noted that the president had "final authority" over all curricular matters. The court reasoned: These governance provisions expressed the parties' hopes and expectations with respect to faculty reorganizations and curriculum changes, but, as applied to the facts of this case, they are not an enforceable contract between the [administration] and the faculty as to the faculty's mandatory participation in the curriculum changes which the President made and which the Board of Visitors has not rescinded. FRC's remedy as a group in this case is political not legal.

ATTACHMENT B

FROM: "FACULTY HANDBOOKS AS ENFORCEABLE CONTRACTS: A STATE GUIDE" AAUP, 2009

VIRGINIA

Tuomala v. Regent University, 477 S.E.2d 501 (Va. 1996). Three professors signed "three-year continuing contracts" for "tenured faculty appointment[s]," the terms of which were defined in the faculty handbook, and the university later modified that handbook to provide that professors receiving appointments under continuing contracts were entitled to annual "new contract[s]," rather than renewal of existing contracts. In the end, the professors were entitled to three years of employment under their three-year contracts, and after that they were entitled to one-year contracts only.

Sabet v. Eastern Virginia Medical Authority, 775 F.2d 1266 (4th Cir. 1985). A professor believed that a university offered "permanent tenure" in accordance with AAUP policy. This belief, based on the widespread adoption of AAUP policies and the fact that the university had always renewed contracts in the past, was not justified, the court ruled, when the faculty handbook stated that the university had no such tenure policy.

Siv v. Johnson, 748 F.2d 238 (4th Cir. 1984). Where standards for tenure in the faculty handbook were formally adopted by the board of visitors, which had sole authority to grant tenure, the standards were presumed by the court to be part of a nontenured professor's contract. Although the handbook stated that faculty recommendations for tenure should be followed barring some "compelling reason," the faculty member's constitutional due process rights were not violated when the administration denied tenure in spite of faculty recommendations and did not state a compelling reason for doing so. The administration's decision was based on the perceived lack of scholarly potential, a constitutionally permissible reason.

The URL for the AAUP publication, "Faculty Handbooks as Enforceable Contracts: A State Guide":

<http://www.aaup.org/NR/rdonlyres/3F5000A9-F47D-4326-BD09-33DDD3DBC8C1/0/FacultyHandbooksasEnforceableContractssmall.pdf>

ATTACHMENT C

AAUP Presidential Search Committee Checklist Presidential Search Committee Checklist

By Muriel E. Poston

Join the AAUP!

Contribute

The search for a new president is one of the most significant instances of shared governance in the life of a college or university, but it is also one of the most challenging. Although governing boards have the legal responsibility for selection of a president, the process of selection is the fundamental in determining which candidate has the appropriate academic leadership and administrative skills needed to lead the institution. The recognition of shared responsibility in the search process for academic administrators is reflected in the American Association of University Professors' 1966 [*Statement on Government*](#):

Joint effort of a most critical kind must be taken when an name institution chooses a new president. The selection of a chief administrative officer should follow upon a cooperative search by the governing board and the faculty, taking into consideration the opinions of others who are appropriately interested.

AAUP's 1981 *Faculty Participation in the Selection, Evaluation, and Retention of Administrators* articulates the importance of faculty participation:

The Statement on Government emphasizes the primary role of faculty and board in the search for a president. The search may be initiated either by separate committees of the faculty and board or by a joint committee of the faculty and board or of faculty, board, students, and others; and separate committees may subsequently be joined. In a joint committee, the numbers from each constituency should reflect both the primacy of faculty concern and range of other groups, including students, that have legitimate claim to some involvement. Each group should select its own members to serve on the committee, and the rules governing the search should be arrived at jointly. A joint committee should determine the size of the majority which will be controlling in making the appointment. When separate committees are used, the board, with which the legal authority rests, should either select a name from among those submitted by the faculty committee or should agree that no person will be chosen over the objections of the faculty committee.

The following is intended as a practical guide for implementation of these principles in the search for a president.

Search Committees

The board of trustees, working with the faculty, creates the search committee structure and defines the charge of the committee. The committee may be formed as a single entity representing both the faculty and the board, or there may be a two-tiered committee structure. In the latter case, the faculty committee-which may include other constituent groups such as students and alumni-is separate from the board committee. However, a single committee representing the faculty and

board is the most common standard. Such a committee provides an opportunity for shared perspectives and broader understanding among the various groups and thus fosters a sense of unity in accomplishing a common goal-identifying a president who is qualified to serve as both the chief academic and the chief executive officer of the institution.

- **Committee Composition.** Representatives from the board already and faculty as well as representatives of other institutional constituencies commonly serve on joint search committees. Because faculty play a significant role, their representation on the committee should not be limited to a single member. The precise number is dependent on the size of the committee but should reflect the primacy of faculty concern in determining presidential leadership. The involvement of administrators on the search committee is problematic and should be discouraged since they may represent the perspective of the outgoing administration.
- **Committee Chair.** The chair appointment is typically made prior to the formation of the search committee. The joint search committee chair is typically chosen by the board and is usually a trustee who can provide an important connection between the board and the search committee. In cases where a two-tiered committee structure is utilized, a trustee chairs the board committee and a senior faculty member chairs the constituent group committee.
- **Committee Selection.** Each constituent group should select its own members to serve on the committee. This gives the greatest sense of legitimacy to the members and acknowledges the respective roles of the constituent groups.
- **Committee Size.** The size of a joint search committee will vary according to the institution but may range from nine to twenty. Larger committees are not necessarily less effective, and a good process is considerably more important than the size in determining a successful outcome. In cases of a two-tiered committee structure, the individual committees are smaller.
- **Committee Charge.** The search committee charge is formulated by the board, in consultation with other constituents, and reflects the role of the board in making the selection of the president and in defining the terms and conditions of the appointment. The charge also will set forth other criteria such as:
 - search committee membership
 - statement of presidential leadership qualities
 - breadth of the search: regional or national
 - expectations regarding use of search consultants
 - number of candidates to be recommended to the board for the final decision
 - date by which the board expects recommendations of nominees

Search Process

The search committee has the responsibility of designing its own procedures and timetables. The basic functions of a search involve the identification of candidates; screening and interviewing; and the recommendation of a short list of candidates to the board for consideration. Key factors that should be considered in structuring the search process are:

- **Search consultants.** If executive recruiters or consultants are to be utilized, their selection (or that of a search firm) is one of the first tasks of the committee, unless this decision has already been mandated by the board. A search consultant may be most helpful in educating the committee about the search process, providing a broader pool of candidates for consideration, or checking the candidate references beyond the scope of traditional academic criteria. However, the role of the search consultant should be clearly defined and should not extend into matters of educational or institutional policy. Search firms (which may be non-profit or for-profit organizations) and their consultants range from those that serve only educational institutions to those that have an education division within a large executive search firm. It is important to interview the potential search firms, preferably those staff members who would be assigned to the presidential search, to determine if the match is appropriate to the institutional characteristics and needs. References of the search firm candidates should be contacted. Among the questions that might be asked: How successful were they in previous searches? What were their interactions with faculty and other constituent groups? Do they understand and support the role of faculty in the search process?
- **Confidentiality.** The presidential selection process is a classic conflict between the right of individual privacy and the public's right to know. It is important for the campus community to know the procedures that the committee will use in the search process, and these should be made public early in the search. It is the responsibility of the search committee to keep constituent groups informed of the progress of the search. However, in order to attract the best candidates, the search process may involve some measure of confidentiality, especially during the early phases. The disclosure of candidates prior to the development of a short list of nominees to recommend to the board can result in the loss of the best candidates. However, to ensure a successful search, the nominees who are recommended to the board should visit the campus and be interviewed by the faculty and possibly other constituent groups. The approach to implementing confidentiality and the process and guidelines for campus visits are matters to be resolved early on in the search process.
- **Institutional Analysis and Leadership Criteria.** The search committee should spend some time defining the present condition of the college or university, determining what problems must be faced, what priorities the

institution has, and what direction it must take to meet its challenges and opportunities. This institutional analysis is needed in order to determine the type of leadership qualities needed for this particular stage in the college or university's development. The leadership criteria statement defines the principal qualities that are required in the new president--an academic leader, an experienced fund raiser, etc. The statement of leadership criteria should be circulated to various institutional constituencies for review and comment. Consensus within the campus community on the leadership qualities is important since these criteria are used in evaluating candidates' credentials and again in the and interview process.

Sources of Potential Candidates

In most instances, institutions engage in a comprehensive search. Casting the net broadly includes soliciting nominations from faculty, administrators, and alumni; running advertisements in national journals; and, if an executive recruiting firm is engaged, using the search consultant to identify candidates for review. The issue of confidentiality will again be raised during this step in the process since some nominees, particularly those who are currently successfully leading an institution, may not wish to be identified as candidates.

Screening

The purpose of screening is to identify a limited number of candidates from the applicant pool. In the first phase, the list is commonly reduced to fifteen to twenty-five names, in the second stage, to eight to ten names. The final stage of the process involves selecting candidates whom the committee will recommend to the board. Issues to be considered in the screening process are:

- **Background and reference checks.** The search committee may charge a subcommittee with checking the references of the fifteen to twenty-five candidates selected after the initial screening of credentials. These are generally the references provided by the candidate. In this phase of the search process, the committee usually refrains from contacting other possible sources of information out of respect for the candidate's privacy. In the case of the eight to ten candidates who become semi-finalists, additional sources of information beyond those listed by the candidate may be contacted. A search consultant may be useful at this point in the referencing process, particularly for conducting criminal and media background checks. In the final phase of screening, anyone who might be able to provide useful information on the candidate's leadership qualifications should be contacted. Referencing by faculty members of the search committee who can contact their counterparts at the candidate's campus is particularly crucial at this stage. Background information at this point can be obtained not only from telephone calls but also from visits to the candidate's campus.
- **Interviewing.** The interviewing process may occur in two stages. In

order to preserve confidentiality, there may be off-campus interviews with the semi-finalist candidates. Direct contact between the candidates and the search committee is important. The second stage of the interview process involves campus visits where the candidate will meet with different constituencies, particularly faculty and students. These open visits are crucial in the success of the search process because they permit members of the campus community to participate in providing impressions, as well as to contribute to the candidate's understanding of the culture of the institution. In this final phase of the selection process, open visits present vitally important opportunities for both the campus community and the candidate to determine each other's suitability. This final step is extraordinarily useful to the search committee in making its final recommendation to the board.

Final Recommendation

The search committee, depending on its charge, may recommend only one candidate to the board. A committee that has conscientiously fulfilled its duty will recognize the best candidate, one who "fits" the institution, and will be able to convince the board of the wisdom of its recommendation. On the other hand, a successful search committee may be able to identify three or more candidates who would make an excellent president. The final act in the search process is the appointment of the president, a decision usually made by the full board.

This checklist is intended as a brief guideline for the presidential search process. The search itself is an opportunity for a university or college to take stock, consider new directions, and identify the individual best suited to lead the institution into its future.

References

Judith B. McLaughlin and David Riesman, *Choosing a College President: Opportunities and Constraints* (New Jersey: Princeton University Press, 1990).

Barbara Leondar and Charles B. Neff; *Presidential Search* (Washington, D.C.: Association of Governing Boards of Universities and Colleges, 1992).

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ATTACHMENT D

GMU Faculty Handbook Preface:

The 2009 edition of the *GMU Faculty Handbook* becomes effective on January 1, 2009. It defines and describes the conditions of full-time instructional, research, and clinical faculty employment; the structures and processes through which the faculty participates in institutional decision-making and governance; and the academic policies of the University as established by its Board of Visitors.

The provisions of the *Faculty Handbook* are incorporated by reference in all full time instructional, research, and clinical faculty employment contracts. These provisions are binding on the University and on individual faculty members. The *Faculty Handbook* governs the employment relationship of individual faculty members, and sets forth the rights, privileges, and responsibilities of faculty members and of the University. Faculty and academic administrators are expected to read the *Faculty Handbook* and to be familiar with its contents.

Except as noted below, revisions to the *Handbook* may be proposed by any of the parties who have participated in its adoption: the Board of Visitors; the Faculty Senate, acting on behalf of the General Faculty; and the central administration.

Proposals to revise the Handbook originating from the Faculty Senate or University administrators will be considered by a joint committee of the faculty and the central administration consisting of three faculty elected by the Faculty Senate, at least one of whom must be a Faculty Senator, and two administrators appointed by the Provost. The chair of the Faculty Senate appoints one of the elected faculty members as the committee chair. Arrangements must assure an expeditious meeting in cases of urgency. It is not necessary to convene a committee for the following cases:

- Revisions proposed and approved by the Faculty Senate, and approved by the Provost;
- Revisions proposed by the central administration, and submitted to and approved by the Faculty Senate.

All revisions require the formal approval of the Board of Visitors. Each revision shall be incorporated, as of the effective date fixed by the Board, in all existing and future faculty employment contracts; however, no revision shall operate retroactively to change materially the substantive rights of any faculty member or the conditions of award of tenure for faculty members already granted tenure, or who have filed a written request with his or her dean or director to be evaluated for the award of tenure. For example, the conditions of employment governed by the *Handbook* may be changed prospectively and criteria for tenure may be changed for faculty who have not been awarded tenure, but may not be changed for faculty already tenured. Where no effective date is fixed for a revision, it shall become effective on July 1st following its approval by the BOV.

When a policy or procedure described in this Handbook is subject to alternative interpretations, then the Provost and the Faculty Senate Executive Committee will be the designated body to resolve the disagreement.

As of the date of the adoption of this edition of the *Handbook*, all prior policies with respect to matters covered therein are superseded. With the exception of the bylaws governing the University's Board of Visitors, the provisions of this *Handbook* supersede all inconsistent bylaws, policies and

procedures in effect at the time of its adoption by the Board of Visitors (including, if applicable, custom and usage) of any officer, person, body, or unit of the University, including but not limited to and the Provost's Office assume joint responsibility for updating and maintaining the contents of the *Faculty Handbook* in both the print and web versions.

As of the date of the adoption of this edition of the *Handbook*, all prior policies with respect to matters covered therein are superseded. With the exception of the bylaws governing the University's Board of Visitors, the provisions of this *Handbook* supersede all inconsistent bylaws, policies and procedures in effect at the time of its adoption by the Board of Visitors (including, if applicable, custom and usage) of any officer, person, body, or unit of the University, including but not limited to the President or other officer of the University and any college, school, institute, department or other faculty organization.

The *Handbook* Committee acknowledges that some sections of the 2009 edition use language taken from policy statements of the American Association of University Professors. The use of AAUP language does not, however, represent any University endorsement of AAUP policies other than those explicitly contained in this *Handbook*.

The Faculty Senate and the Provost's Office assume joint responsibility for updating and maintaining the contents of the *Faculty Handbook* in both the print and web versions.

University policies are located on the university's website at <http://www.gmu.edu/facstaff/policy/newpolicy/>. The Provost's Office web address is <http://www.gmu.edu/departments/provost/>. Other important information is located on the websites of the Human Resources and Payroll Office (<http://hr.gmu.edu/>) and the Office of Equity and Diversity Services (<http://www.gmu.edu/equity/>). Please refer to these websites for issues not addressed in the *Faculty Handbook*.

Members of the Handbook Committee, 2009 Edition

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ATTACHMENT E

From GMU Faculty Handbook

Section 1.2.5 Faculty Participation in the Selection of Certain Members of the Central Administration

The faculty plays a vital role in the appointment and reappointment of senior academic administrators and other leadership positions related to the academic mission of the university.

The Board of Visitors provides for participation on presidential search committees by faculty who are elected by the General Faculty. The search and selection process must include opportunities for the General Faculty to meet with candidates who are finalists for the presidency. The Board of Visitors also provides for participation in the process of presidential reappointments or contract extensions by faculty who are elected by the General Faculty. This process includes an opportunity for the General Faculty to meet with the President to discuss his or her achievements and future plans for the university.

The President provides for faculty participation on search and reappointment committees for the Provost by faculty who are elected by the General Faculty. The search and selection process must include opportunities for the General Faculty to meet with the Provost or with candidates who are finalists for the Provost position.

The Provost provides for participation on search and reappointment committees for college, school, or institute deans and directors by faculty who are elected from and by the faculty of the college, school, or institute in which the appointment will occur. The search and selection process must include opportunities for the college, school, or institute faculty to meet with the dean /director or with candidates who are finalists for the position.

The Faculty Senate will assist in conducting elections by the General Faculty.

III. Adjournment