

**The Board of Higher Education
of the City of New York**

(b) P & B Procedures: RESOLVED, That the recommendations contained in the following Personnel and Budget Procedures recommended by the Administrative Council at its meeting of June 5, 1967, be adopted as a statement of Board policy; and be it further

RESOLVED, That the document be brought to the attention of all relevant college officials.

NOTE: The above resolution was adopted with the understanding that if and when a University-wide faculty body is established the procedures may be reviewed by that body.

PERSONNEL AND BUDGET PROCEDURES

RECOMMENDATIONS:

- A. The attached memorandum, dated November 7, 1958, and addressed by Pearl Max and Arthur Kahn to the Administrative Council, be reissued, circulated very widely, and recirculated every year, so that newly appointed administrators and faculty may be made aware of it from time to time. (A similar procedure is followed in relation to the Board's policy with respect to student publications, and it has proved reasonably efficacious.)
- B. The following recommendations in the light of subsequent experiences are intended to lend greater precision to the basic document referred to above. Throughout this document, for the sake of simplicity, reference is made only to a department committee on Personnel and Budget. Each such reference is intended to include department committees on appointment, where such committees exist, under plan #1, Board Bylaws, section 9.1d.
 1. The Examination Procedure. The Departmental and College Committees on Personnel and Budget should have constantly before them the fact that they form essential components of the structure whereby the Board of Higher Education and the City University conform to the civil service provisions of the State Constitution (Article V, Section 6).^{*} Their conduct should reflect at every point a full realization of the official nature of their proceedings, quite distinct from the easy informal interchange of unstructured faculty discussions. Thus:
 - a. Minutes. The minutes of a P & B Committee should conform to the canons set forth by Robert's Rules of Order, Revised: (page 248) "The secretary...should keep a record of what was done and not what was said..." The actions upon motions, and not the discussion which led to such actions, should be recorded, unless the P & B should order, by a majority vote, that the discussions be recorded. It is the duty of the Chairman of the B & P Committee to rule out of order random and irrelevant discussions of the candidate's merits, and to keep the discussions to the consideration of objective and relevant data, insofar as this is practicable. Voting should be by secret ballot. The minutes should be submitted for approval at the next succeeding meeting.
 - b. Uniform Criteria. The processing of recommendations coming before the P & B Committees should make use of established forms, which should be uniform throughout the college, and, if practicable, throughout the university. The Chancellor's office should prepare such forms for the approval of the Administrative Council. (The content of the papers coming before the P & B Committee may exhibit the widest variation which the college deems desirable; it is the form which should be the same throughout.)

^{*} "Appointments and promotions in the civil service of the state and of all of the civil subdivisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination, which, as far as practicable, shall be competitive..."

- B. 1. c. Evaluation of Teaching Effectiveness. The evaluation of the teaching done by the candidate for reappointment or promotion is a basic element in the "Unassembled civil service examination" procedure. Here again, we recommend a uniform instrument to be filled out by the evaluators, with basic mandatory elements, to be supplemented where this is desirable.
- For classroom teachers, consideration should be given to such questions as the teacher's control of the subject matter and the distinctive methods of the discipline, ability to communicate with students and colleagues, effectiveness in stimulating thought, ability to foster active participation in the learning process on the part of students, ability to awaken a conscious sense of a learning experience. It is often true that, in the evaluation of traits such as these, a teaching observation is a desirable instrument, particularly when less experienced teachers are being judged. But it should be recognized that such observations often provide an inadequate base for judging a teacher and that other means of evaluating teaching effectiveness are available and should be used. For senior professors, the record of their students in subsequent courses, and the testimony of graduates are often valuable. An appraisal of materials, including examinations, prepared for a course can be informative. Contacts with a professor outside the classroom make significant contributions to a valid judgment. An evaluation form should be prepared which encourages consideration of the full range of relevant elements. When teaching observation reports are used, their major findings should be communicated (by the department chairman) to the teacher who has been observed mainly to the end that the teacher may know what the criticisms of his teaching are and strive to correct them. It should be understood that statements made by others than the chairman have no standing, and such statements should be uniformly avoided. The consideration of teaching effectiveness should in every case form part of the committee deliberations. This is not to imply any fixed number of evaluations in any period of time, but the Chancellor should prepare for the approval of the Administrative Council, a minimum schedule of such evaluations. For members of the instructional staff, such as librarians and counsellors, who are not engaged in classroom teaching, similar evaluation forms should be developed to encourage specific consideration of relevant elements, and a minimum schedule of formal evaluations should be agreed upon. In these cases, too, the supervisor should communicate the evaluator's findings to the staff member involved. A consideration of the effectiveness of the staff member should in every case form part of the P & B committee's deliberations on the member's reappointment or promotion.
- d. Reports of Scholarly and Creative Achievements. Up-to-date reports of each candidate's scholarly and creative achievements, with particular emphasis upon the period following the last major personnel action in his regard, should form part of his personnel record.
- e. Reports of Service to the College Community. Up-to-date reports of each candidate's service to the college community, with particular emphasis on the period following the last major personnel action in his regard, should form part of his personnel record.

- B. 1. f. Appeals. The action of a departmental P & B committee in refusing to make an affirmative recommendation, unless appealed from by a candidate considering himself aggrieved is final and conclusive as far as faculty action is concerned, and may not be acted upon by any faculty body higher in the chain of promotion procedure (i.e. the divisional or college P & B). Notwithstanding this provision, the president is free to make his own recommendation in accordance with the pertinent bylaws of the Board.

*2. No Presumptions. At every step in the appointment and reappointment procedure, it should be made clear to the candidate and to all concerned that, until the candidate gains tenure under the provisions of the statute and the bylaws of the Board, each appointment is for one year, there is no presumption of reappointment, and no reasons for non-reappointment need be given. This fact should be communicated, in academic rather than in legalistic language, in the original and subsequent letters of appointment or reappointment, and in all conversations held with the candidate, both by department members and chairman, and by officers of the college outside the department. The temptation to attract promising candidates to the college by implications of the virtual certainty of a permanent position must be sternly resisted, unless and until the tenure law is revised to provide, as many universities do, for permissive initial tenure appointments at certain ranks. In this connection, it should be made quite clear that even the extant provision whereby a person initially appointed to a professorial (full, associate, assistant) rank may be granted tenure after one year is permissive, not mandatory; such tenure actions, like all others, rest solely upon the affirmative action of the Board, and are not accomplished by the recommendations of officers below the Board. The recommendation that no reasons should ever be given for the action of a committee in voting not to recommend reappointment or promotion of a candidate is a recommendation which was arrived at after a rather careful consideration of the pros and cons.

On the side of giving reasons, the most potent argument arises from a sense of fair play: if a person has tried his best to make good in a position, it seems in accord with our American traditions that he should be told wherein he failed and be given an opportunity to rebut, explain or otherwise appeal. Furthermore, the need to support a non-reappointment by the citation of definite reasons might be conceived of as a barrier to the forces of malice and prejudice, whether personal or ethnic.

On the other side, the necessity to give reasons for non-reappointment, with the consequent receipt of rebuttals, explanations and submission of contrary expert opinion, places the college and its P & B committees in the position of defendant rather than of judge. College officials would soon find their time, energies and talents dissipated in disputes. Academic excellence could not thrive in that atmosphere and a premium would be placed on peaceful mediocrity. Often the reasons have nothing to do with the candidate himself (he may indeed be satisfactory), but rather with the possibility that better candidates, with wider backgrounds, more versatility, or specialties which are more likely to be of use to the department in the years to come, may be available, and the department does not desire to foreclose the opportunity to attract such candidates.

* Exceptions to this paragraph may be made for persons of proven record who have achieved tenure at another recognized institution of higher education and whose first appointment with The City University of New York is to be as full professor.

- B. 2. More importantly, any requirement that reasons be given for non-appointment would have the effect of instituting a type of presumptive tenure inimical to the conduct of the colleges as institutions of higher learning. It is sufficient that reasons or cause must be proven to terminate the services of a tenured person. If it is not too paternalistic in tone, still another argument against the giving of reasons for non-reappointment may be urged: it is really not in the best interest of the candidate himself, for it makes a matter of record a negative evaluation which may come back to plague him later.
- On balance, we have decided to recommend against ever assigning reasons for non-reappointment or non-promotion. We likewise believe that it would be professional misconduct for a member of a P & B committee to disclose the substance or even the nature of the discussion at the P & B meeting. As far as the actions of a Department and/or its committees in respect to a candidate are concerned, only the Chairman of the Department should be empowered to discuss these actions with a candidate. As far as the actions of the college P & B committee, with respect to a candidate are concerned, only the president of the college or his designee should be empowered to discuss these actions with a candidate.
3. Confidentiality. The confidentiality of reports, including evaluation reports, on the qualifications of candidates for appointments, reappointments, and promotions should be preserved, and to that end these reports should be kept in a confidential file and should not be part of the candidate's personnel folder.
- This recommendation has been arrived at after careful weighing of the affirmative and negative considerations involved. On the side of making these reports available to the candidates, we considered the analog to the right of a person accused to know the nature of the accusations against him, and to confront and cross-examine his accusers. On the other side, we recognize as a countervailing, and indeed a prevailing force, the need which our committee members have, in fulfilling their constitutional obligations as a virtual civil service board of examiners presiding over an unassembled examination, to have at their disposal the professional judgment of those competent to assess the scholarly and instructional qualifications of the candidate. There is little likelihood that leaders in the world of scholarship and college teaching will give us the benefit of their candid opinion of colleagues in their fields if they cannot be assured of confidentiality; indeed, if their expressions of opinion are elicited by a promise of confidentiality, as in practice they must be to secure a really frank expression of judgment, it would be a breach of faith to violate such an undertaking of confidentiality.
4. Inspection of Personnel Folder. Apart from confidential reports, including evaluation reports, considered in the preceding paragraph, the personnel folder of any candidate should be open to his inspection, and to that of persons engaged in official business of the college or department, but not to that of others.
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December 18, 1967

MEMORANDUM

TO: Administrative Council DATED: November 7, 1958

FROM: Mrs. Max and Mr. Kahn RE: Appointment and Tenure procedures
with respect to the instructional
staff

A number of cases have arisen in court and elsewhere that have raised questions concerning the procedures used in recommending appointments, reappointments and tenure on the instructional staff. In view of these "clouds on the horizon no larger than a man's hand," it may be helpful to have this review of the legal and procedural basis upon which instructional appointments are made and tenure is granted.

APPOINTMENTS AND PROMOTIONS

Under the provisions of the New York State Constitution (Art. V, Sec. 6), all appointments and promotions in the public service must be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive.

The legislature has determined that in the case of appointments and promotions in the instructional staff of the Board of Higher Education, the board shall determine to what extent examinations are practicable to ascertain merit and fitness and, in so far as examinations are deemed practicable, to what extent such examinations should be competitive (Education Law, Sec. 6206, subd. 7). To that end the board appointed a committee which investigated the practicability of holding examinations with respect to positions on the instructional staff. On the basis of a study of college practices throughout the country, the committee submitted a report (1941 Minutes of the Board of Higher Education, p. 341, April 28, 1941) recommending that competitive examinations be deemed impracticable for certain instructional position and that procedures for recruitment and scrutiny by college faculty committees and college officers be used in lieu of formal examinations. The committee stated (p. 347):

*** The bylaws of the Board have been made explicit in prescribing the procedure by which recommendations for appointment to the instructional staff are made. It is a procedure involving an analysis and evaluation of the professional records and achievements of the applicants involved by a Committee of the department, by a joint committee of heads of all departments and by the president of the college. The education, graduate work, publications, teaching experience, research record and numerous other factors evaluated by the Faculty committees and the President in considering candidates for positions are referred to in some detail in the communication from the presidents of the city colleges as set forth in Appendix B. It is definitely and clearly a procedure that is equivalent, at the least, to an unassembled civil service examination.

With the cooperation of the faculties the present bylaws were formulated setting up appointment committees in the departments, review by college committees and the

president, and final approval by the board.

The underlying assumptions which justify the procedures established by the bylaws are:

1. That there is a thorough search for the best possible person for the post.
2. That sources most likely to produce suitable candidates are solicited (other colleges professional associations, recommendations from professional sources, etc.).
3. That an evaluation is made by the appropriate faculty committee of those recommended, as well as those who have themselves filed applications.

Procedurally, it is desirable that written material listing the candidate's training and experience and recommendations from those professionally qualified to pass upon his work be kept on file and be of sufficient quality so that if they were reviewed by someone else with knowledge and experience, that person or agency could reasonably come to the same conclusion as the faculty committee. It would be helpful to have this written material retained for at least one year beyond the date when the candidate's services are terminated. If an appeal concerning the termination of such services is pending, this written material should be retained at least until the appeal is disposed of.

TENURE

The bylaws provide that reappointment on annual salary to certain instructional titles for a fourth full year shall carry with it tenure on the instructional staff (sec. 11.2). Since we do not have formal examinations prior to initial appointment, the probationary period is intended to be an integral part of the examination process. Hence it is important that each department arrange orderly and specific procedures for evaluation of each probationer.

When the Tenure Law and bylaws were framed, there was general agreement among representatives of the faculty and the board that appointment of an instructor for one year, or two years, or three years did not carry with it a presumption of tenure. There was agreement that the best possible persons should be sought and that tenure should be recommended not on the basis of ability to meet minimum qualifications, but on a high standard of excellence and increasing usefulness as a teacher and scholar. Hence non-reappointment for a second, or a third, or a fourth year does not necessarily depend upon poor performance. The possibility of securing a more qualified candidate a year later, or two years later may very well be a factor in deciding upon reappointment or non-reappointment of an existing instructor, conditions of enrolment, budget, flexibility of teaching staff are also relevant factors in coming to a decision concerning tenure.

However, it is important that there be available objective evaluations which justify whatever conclusion the committee comes to. There is, of course, difference of opinion with respect to the relative weight that should be assigned to visits to classrooms, teaching ability, research, publications, enrolment in an instructor's course, opinions of colleagues and students, and other criteria. However, whatever criteria are used, they should provide an objective and subjective record which, if reviewed by someone else, would indicate a reasonable basis for the determination of the department committee.

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Since few of us have infallible memories which can recall oral reports or views with complete accuracy, provision should be made for written reports. The fact that the candidate's competence and abilities have been discussed with him and that he has been given an indication wherever possible of the areas of his weaknesses and strengths should be noted in a written memorandum. There are numerous objective and subjective values that go into a determination of a candidate's ability and though it may sometimes be difficult to be specific, every effort should be made to minimize the subjective criteria and to test those that are used by submission to a committee for determination.

For all practical purposes, decisions as to tenure must be made within 2 1/2 years after a candidate's appointment. Since there is a time interval before evaluation can begin, the period of observation is relatively short. Accordingly, observations and evaluations, once begun, should be consistent and consecutive, rather than sporadic. Notes concerning such evaluations should be made at the time of the evaluation and placed on file.

Bylaw sec. 9.2 charges the Chairman of a Department with the responsibility

"for assuring careful observation and guidance of those members of the instructional staff of the department who are on temporary appointment. The chairman of the department, when recommending such temporary appointees for a permanent appointment shall make full report to the president and the committee on faculty personnel and budget regarding the appointees' teacher qualifications and classroom work, the relationship of said appointees with their students and colleagues, and their professional and creative work."

Each candidate should be informed as early as possible of the intention not to reappoint him for the succeeding year if such non-reappointment is probable. The bylaws provide for written notice by April 1st if service is to be discontinued at the end of the third year. The spirit of the bylaws would indicate that a like disposition be made with respect to decisions at the end of the first and second year, where possible.

It is desirable that notice to a candidate of board action with respect to his appointment for the first, second and third year indicate that the appointment is of a temporary nature, stating the terminal date of the appointment and adding "that services beyond the period indicated in the notice of appointment are possible only if the Board takes affirmative action to that effect"(Sec. 11.7).

No procedure or machinery is infallible. It is inevitable that questions will be raised concerning determinations affecting faculty appointments and tenure. From time to time dissatisfied candidates attack the procedures which lead to determinations of non-reappointment. If tangible and objective records exist upon which the determinations attacked were based, such attacks could be confidently met. It is reasonable to assume that where the procedures heretofore outlined are followed, the determinations of faculty agencies will provide a constructive basis upon which those determinations can be justified.

NOTE: The Bylaws sections referred to in the original November 7, 1958 memorandum have been changed to the current Bylaws sections.

Martin J. Warmbrand, Secretary of the
Board