

FACULTY SENATE MINUTES
January 27, 2005

The Faculty Senate of the University of North Alabama met January 27, 2005 in the Faculty/Staff Commons of the University Center at 3:30 p.m.

President Blose called the meeting to order.

Governance Structure. They asked for more time to consider the issue. They expressed a concern that they would have reduced representation. According to the recommendation however, they would in fact have more.

- C. President Blose reported that Gordon Stone from the Higher Education Partnership will be with us for our February meeting before Higher Ed Day.

OLD BUSINESS:

- A. Senate Committee Reports:
 - 1. The Academic Affairs Committee is continuing to work on the honors program and the withdrawal policy.
 - 2. Dr. Craig Robertson reported that the Faculty Affairs Committee is continuing to work on the tenure and promotion policy with a rough draft being circulated among the committee members. They hope to have a recommendation for the February meeting. Dr. John Clark has been charged with getting information from peer institutions and feedback from faculty and departments concerning the issue of office hours and would like to have a recommendation by the February meeting.
 - 3. The Faculty Attitude Survey Committee has sent out email soliciting feedback and encouraged senators to supply the committee with feedback from their departments concerning the priorities they would like to address with the survey. Issues listed included the ADA policy, the office hours policy, and a cheating policy.
 - 4. Senator Makowski reported the State Political Relations Committee has not yet met this year. He reported that there is additional money in the Educational Trust Fund but the General Fund has a deficit. At this time it seems that the Educational Trust Fund will be protected.

- B. Shared Governance Committee Reports:
 - 1. The Strategic Planning and Budget Committee along with the Faculty/Staff Welfare Committee is looking at other institutions with regard to pay scales for the different ranks and how to fund the increases for faculty and staff salaries. They hope to make a recommendation in June. President Cale will attend the next meeting of the committee. The Strategic Planning and Budget Committee is also looking at the Non-technology Equipment Fund and presented a copy of the resolution which instituted the fund. (See Attachment A). The policy to access the funds: faculty request to the chair, chair request to the dean, dean request to the VPAA. The Committee will begin review of next year's budget. The Committee members were encouraged that Board of Trustees member Steve Pierce has taken great interest in the budget.

2. The Academic and Student Affairs Committee has met twice with the STAMATS consultants. They are investigating the ADA policy and the withdrawal policy.
3. The Shared Governance Committee has reviewed the charge and membership of the seven original committees. They will begin reviewing the organizational provisions of the Shared Governance Document. If there are any concerns or areas not working, the Committee asked for feedback.

NEW BUSINESS:

- A. Senator Wilson moved to refer the issue of examining and possibly revising the final exam schedule to the Academic Affairs Committee. Senator Adler seconded. The motion passed unanimously.
- B. Dr. Newson addressed the issue of the readmission policy. Currently there are one semester, one year, and five year suspensions. Ten peer institutions have been studied with regard to suspensions. None were found to have a five year suspension. He asked that we reevaluate our current policy. Senator Gaston moved to refer the issue to the Academic Affairs Committee. Senator Brewton seconded. The motion passed unanimously.
- C. Mr. David Cope presented three issues concerning the Americans with Disabilities Act (ADA).(See Attachment B) The federal court system (through case law) establishes the standards for classifying an impairment as a disability within the meaning of the ADA. These standards are applicable in any context in which a claim of disability occurs (employment, university environment, public accommodations, etc), according to the Supreme Court. He cited the words of Supreme Court Justice Ginsburg in 1999 who quoted Congress: "individual s with disabilities are a discrete and insular minority, persons subjected to a

need outside counsel to guide the University. After President Potts met with the Executive Council, he changed his mind and stated that he would submit this issue to a committee on campus. This resulted in the legal opinion of Dr. Lovett being used to determine whether the legal opinion of Dr. Lovett was in fact correct. The University does in fact need outside counsel to determine if our policy is in accord with federal law. It is important that we get correct legal advice and formulate a policy that conforms to the law. Today there is only one person on campus who determines who has a disability and what accommodation should be made. It was recommended that there be a committee created to oversee this issue. Three things are needed: 1. Outside counsel, 2. University policy created and understood by the faculty. 3. A Committee charged with the review and oversight of the ADA policy.

President Cale stated that he would like to study this issue further. Senator Thorne moved to table this issue until next month. Senator Brewton seconded. The motion passed unanimously.

Senator Thorne moved that the meeting be adjourned. Senator Roden

ATTACHMENT A

ATTACHMENT B

The two versions of the Americans with Disabilities Act (ADA)

I have been conducting extensive research into the ADA for more than a year. I have been assisted in this effort by three senior attorneys with the U.S. Department of Education, who have provided me with their written legal opinions on ADA issues. At the suggestion of these attorneys, I have read numerous decisions about the ADA in federal courts, including the U.S. Supreme Court. As

demanding standard of impairment in certifying a student as being disabled

Our university, by contrast, requires only a diagnosis of an impairment or disease by a medical or clinical practitioner as validation of a disability. There is no requirement at our university that the medical authority provide any test results to support a medical opinion or even have expertise in the diagnosis or treatment of the disability claimed. For example, several semesters ago one of my students was diagnosed as needing accommodations for a disability in **concentration** (a learning disorder) by a physician who treats respiratory diseases. This physician offered no test results to measure this student's actual ability to concentrate. In comparison to UNA, many other universities (including the University of Alabama) apply the rigorous documentation standards of the national organization AHEAD, the Association on Higher Education And Disability. These standards specify for each category of disability what type of medical specialist is qualified to make a diagnosis, what tests must be performed, and what the test results must confirm in order to adequately document a disability. These standards help to ensure that the documentation of a disability fully addresses the requirements

these authorized accommodations through the administrative chain of authority, as specified in the *Faculty Handbook*. This handbook requires that the faculty member with a complaint about the disability standards applied by the Developmental Services Office must “first seek resolution or redress of the grievance informally through the established administrative channels.”

I submitted a copy of the UNA policy that cites these “federal confidentiality mandates” to the U.S. Department of Education and requested a legal opinion on the merits of claims about federal law made in this policy. I received in reply a three-page memorandum from the attorney in this agency who administers the federal law FERPA, which specifies the conditions under which such records may be released to the faculty and discussed with the administrators of a university. This attorney offered a point-by-point repudiation of the legal claims in this UNA policy and asserted that federal law **does** permit university officials who participate in the accommodation process, including faculty and administrators in the faculty member’s chain of authority, to inspect and to discuss the medical/clinical records that pertain to a student’s disability. The federal requirement for confidentiality is merely that the personally identifiable information contained in the disability documentation “must be used only for purposes directly connected with” the accommodation process. This opinion demonstrates that the current university policy, formulated jointly by the University Attorney and the Director of Developmental Services, grossly misrepresents federal law.

The *Faculty Handbook* requires all university officials, including the faculty, to comply with disability law “in accordance with all applicable federal and state constitutions, laws, and valid regulations.” Because of the numerous inconsistencies between the policies of this university and federal law, and because of the unwillingness of our University Counsel to resolve these inconsistencies, I ask the Faculty Senate to pass a resolution which endorses the need for an outside counsel to review the ADA policies at UNA and to prepare a report for the Faculty Senate on the findings of this review. The outside counsel should specialize in the practice called Employment Law—Employer, since faculty members are acting on behalf of their employer when they grant accommodations to the students of this university. The outside counsel should have recent experience in successfully representing employers (including universities) in federal court on ADA matters. This attorney should be aware that the decision in Toyota v. Williams has sharply limited the reach of the ADA. The Faculty Senate should participate in selecting this attorney.

When the review of our ADA policies has been completed, the outside counsel should prepare a document to be used by the faculty, staff, and administrators of the University as a handbook for ensuring the appropriate federal standards for ADA compliance.

