

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 positions 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.

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.


Etta G. Grass, Acting Secretary
of the Board

*A true copy of excerpt from the minutes of the Board of Higher Education
December 18, 1967, Cal. No. 3.(b)*