

CERJ Advice on the CAPAC Appeal Process
January 12, 2011

CERJ has been asked by the Chair of the Davis Division for advice concerning the appeal process for faculty to the Committee on Academic Personnel, Appellate Subcommittee (CAPAC).

The appeals function of CAPAC is specified in Davis Division Bylaw 42(C)(1): “To provide advice independent of the Oversight Subcommittee to the Chief Campus Officer on any review of a personnel action beyond the original review conducted by the Oversight Subcommittee or the Faculty Personnel Committee [CAPOC] subject to the requirements of Davis Division Bylaw 45.” This advice offers an interpretation of Bylaw 45.

A fundamental distinction is made in Bylaw 45 between two kinds of review by Senate personnel committees: reconsideration and appeal.

The necessary condition for reconsideration is that “a Senate member wishes to supply additional substantial or contextual information relevant to a personnel action.” That is, the only way that reconsideration may take place appropriately is when new information would be supplied. Reconsideration is done by the committee that made the original evaluation. While DDB 45(A) only makes the submission of additional information a necessary condition for reconsideration, it was clearly the intent of the authors of the legislation that it be a sufficient condition as well. The following quotation is from the Final Report of the Academic Senate Committee on Procedures for Appealing Recommendation of CAP (PARC), which accompanied the legislation establishing CAPAC. “This [appeals] procedure would not apply to ‘reconsiderations’ based on new information, which would continue to be considered by CAPOC or a faculty personnel committee.” Thus, reconsideration is appropriate if and only if new information would be submitted to the appropriate committee.

The necessary condition for the appropriateness of an appeal is “when a Senate member believes that a personnel committee has failed to apply established standards of merit or has failed to follow established procedures.” A member of the Division who so believes is to consult with an Academic Personnel Adviser, who “shall review the relevant information in light of the established standards and procedures and consult with the Senate member.” DDB 45(D) states that “the recommendations of committees duly constituted to consider appeals are the definitive advice of the Senate to the Chief Campus Officer on personnel actions, except in those cases in which the Committee on Privilege and Tenure makes a recommendation on particular matters within the scope of its authority.”

CERJ advises that CAPAC should only receive cases which are based on a perceived failure to apply established standards of merit or to follow established procedures. All other cases should either be referred to the relevant committee if reconsideration is appropriate or not heard. It should be the prerogative of CAPAC to determine whether the case is in fact of this kind.

If a case is accepted by CAPAC, new information may become relevant if it is determined that it was excluded from the case due to a failure to apply established standards of merit or to follow established procedures. Most likely, the reason for introducing new information would be that it had been excluded from the record due to a failure to follow established procedures. Any other information would be the basis for reconsideration, and reconsideration should take place before the appeal proceeds. The appeals process is clearly intended to exist as a means to correct procedural errors and not as means for re-evaluation except insofar as it is determined that established standards of merit were not correctly applied. The PARC report makes this clear: “The proposed procedure and By-law 45, permits a candidate to appeal on the basis of failure to follow ‘established’ standards of merit or defects in procedure. This practice is desirable because CAP (through CAPAC) should have an opportunity to remedy defects in its own recommendations, if the administration desires to seek the advice of the Senate concerning the appeal.” Clearly the “defects” cited here concern standards and procedure.

The advice given by CAPAC should be of one of two kinds. Either it finds that there has been no defect in the

evaluation of the case by the relevant committee, or it finds defects. If no defects are found, the advice of the relevant committee should be sustained by CAPAC. If defects are found, then the case should be re-evaluated on the basis of the standards or procedures that CAPAC deems to be correct. CAPAC should be sensitive to the evaluations made by the relevant committee which are correctly based and should reverse the recommendations of the committee only if those parts of the record on which the appeal is based, when weighed against those that have been handled correctly, are compelling enough to override the latter.