

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

NANCY NORVELL,)
)
 Petitioner,)
)
vs.)
)
UNIVERSITY OF FLORIDA,)
)
 Respondent.)
_____)

CASE NO. 89-0144

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Hearing Officer, William F. Quattlebaum, held a formal hearing in the above-styled case on October 30-November 1, 1989, in Gainesville, Florida.

APPEARANCES

For Petitioner: Rodney W. Smith, Esquire
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For Respondent: Barbara C. Wingo, Esquire
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STATEMENT OF THE ISSUES

The issue in this case is whether the University of Florida acted inappropriately in determining that Dr. Nancy Norvell's performance as an Assistant Professor was insufficient to meet the criteria for tenure and promotion.

PROCEDURAL STATEMENT

Petitioner presented the testimony of Nathan W. Perry, Jr., Alan Glaros, Nancy K. Norvell, James H. Johnson, Jacquelin R. Goldman, Russell M. Bauer, Timothy L. Boaz, and Eileen B. Fennell. Petitioner's exhibits numbered 2-4 were admitted into evidence. Respondent presented the testimony of Hugh C. Davis, Russell M. Bauer, Nancy K. Norvell, Nathan W. Perry, Barry R. Greene, Eileen B. Fennell and Richard R. Gutekunst. Respondent's exhibits 1-3 and 5-14 were admitted into evidence. A certified copy of Rule 6C1-7.019, Florida Administrative Code was admitted as Hearing Officer exhibit 1. Joint exhibits 1 (parts A and B)-5 were admitted into evidence

Prior to the start of the formal administrative hearing, hearing was held on the Respondent's Motion in Limine to Protect Confidentiality of Student and

Faculty Records. (Joint exhibit 1A and 1B are identical, with the exception of certain student and faculty records contained in 1B and omitted from 1A, which are, by statute, confidential.) Without objection the motion was granted. Joint exhibit 1B has been placed in a envelope and sealed by the Hearing Officer.

A transcript of the hearing was filed on November 27, 1989. Proposed recommended orders were due 30 days after filing of the transcript. On December 22, 1989, Counsel for Petitioner moved for extension of the filing deadline which was granted without objection. Both parties timely filed proposed recommended orders. The proposed findings of fact are ruled upon either directly or indirectly as reflected herein, and in the Appendix which is attached and hereby made a part of this Recommended Order.

FINDINGS OF FACT

1. The College of Health Related Professions of the University of Florida consists of nine departments, including the Department of Clinical and Health Psychology. Dr. Richard R. Gutekunst is dean of the college. Dr. Nathan W. Perry is chairman of the referenced department.

2. Students in the Department of Clinical and Health Psychology are graduate level students pursuing advanced degrees in the study of abnormal behavior. The department operates a clinic which provides counseling services to appropriate individuals and is utilized as an instructional tool. Clinical instructors supervise student clinicians providing treatment to patients. Such students include graduate students from within the department and interns from outside the University.

3. In April, 1984, Dr. Nancy K. Norvell was, by letter from Dr. Perry, offered employment as an Assistant Professor in the Department of Clinical and Health Psychology. Dr. Norvell accepted the offer and was hired, effective July 20, 1984.

4. According to Dr. Perry's letter of April 16, 1984, Dr. Norvell's duties were "clinical teaching, research and assigned clinical responsibilities on the Adult Consult and Liaison Service and in the general Adult Clinic." Dr. Perry also advised that she would teach the Adult Psychopathology course during the Fall '84 semester.

5. The April 16 letter stated that Dr. Norvell would be evaluated at least once annually in terms of performance of assigned duties and responsibilities. The letter advised that such evaluations were considered in recommendation and final decisions on tenure, promotions and salary. The letter stated that "[t]he criteria for promotion or for the granting of tenure shall be relevant to the performance of the work which the faculty member has been employed to do and to his performance of the duties and responsibilities as a member of the University committee." The letter also outlined the criteria relevant to the granting of tenure, identified as "broad categories of academic service" including instruction, research, and service.

6. As identified in the, letter of April 16, "instruction" includes regular classroom teaching, direction of thesis and dissertations, academic advisement, extension activities, and all preparations for this work including continuing education. "Research" includes publications and other "creative" activities. "Service" includes public, professional, and University activities.

7. Each semester, faculty members of the Department of Clinical and Health Psychology are assigned teaching, research, and service duties, expressed as percentages of employment responsibilities. Such assignments are communicated by memo to the individual faculty members. Dr. Norvell was aware of her assigned responsibilities each semester.

8. During the 1984-85 school year, Dr. Norvell's duties were assigned as 62% teaching, 35% research, and 3% service.

9. Typically, faculty members are evaluated by their students towards the end of each term. Such evaluations are performed in accordance with standardized procedures, which the University has adopted by administrative rule. Students assign overall numerical scores from 1 to 5 for the course and for the instructor, with 1 being the tops of the range. Instructors are not present during the evaluation. Results are not provided to the instructors until after course grades are determined. Such procedures provide anonymity to Dr. Norvell's students evaluated her performance in accordance with such procedures.

10. During the Fall 1984 term, Dr. Norvell taught Adult Psychopathology, a required course for all department students. In the confidential evaluation, her students rated the course as 1.11 and her instruction as 1.11 above the respective department mean of 1.71 and 1.49.

11. During the Spring of 1985, Dr. Norvell taught an elective course. An elective course is conceived by the instructor who teaches the course. The students who enroll in elective courses are generally interested in the subject matter. In the confidential evaluation, her students rated the course as 1.25 and her instruction as 1.25, above the respective department mean of 1.71 and 1.56. Students frequently rated elective courses higher than required courses.

12. Dr. Norvell's first year was ,productive, according to Dr. Perry's letter of evaluation, dated June 26, 1985. In his letter, he stated that she "performed well in the range expected for progress towards tenure." The evaluation noted that Dr. Norvell's clinical billings were lower than other faculty members. Clinical billings are a measure of time spent in clinical teaching, but are not reflective of quality. Dr. Norvell's teaching included both clinical and classroom activities. Dr. Perry attributed the low billings to her recent arrival and expressed his anticipation that she would have no difficulty in increasing her billings.

13. During the 1985-86 school year, Dr. Norvell's duties were assigned as 59% teaching, 33% research, and 8% service.

14. In October, 1985, Dr. Perry became aware of conflicts between Dr. Norvell and clerical staff related to preparation and completion of written case reports. Dr. Perry wrote a letter to Dr. Norvell expressing his concern, advising that certain procedures would be instituted, and stating, "[e]ven with their adoption, it will still be necessary to relate to the staff with courtesy and understanding of their total work loads."

15. During the Fall 1985 term, Dr. Norvell again taught Adult Psychopathology. In the confidential evaluations, her students rated the course as 2.44 and her instruction as 2.44, below the respective department mean of 2.37 and 2.26.

16. By letter of evaluation dated June 25, 1986, Dr. Perry commended Dr. Norvell's research. He further noted her substantially increased clinical billings. However, Dr. Perry stated that her professional judgement was unsatisfactory, and that her negative attitude towards faculty colleagues and staff was "problematic."

17. The evidence shows that from the beginning of her employment with the University until the end of academic year 1985-86, Dr. Norvell was assigned responsibilities as Chief of the Adult Consult Liaison Service. Dr. Perry testified that Dr. Norvell was to be supervised by Dr. Alan Glaros, Director of the Medical Psychology Service and the Pain and Stress Management Clinic. Dr. Glaros and Dr. Norvell recalled their relationship as that of equals. There was friction between Drs. Norvell and Glaros, at least to a degree that Dr. Perry found unacceptable.

18. Following the academic 1985-86 period, Dr. Perry relieved Dr. Norvell of her responsibilities as Chief, in part because Dr. Norvell and Dr. Glaros were unable to work together to Dr. Perry's satisfaction, and because of a departmental reorganization. Dr. Perry subsequently did not assign any service responsibilities as part of Dr. Norvell's employment.

19. During the 1986-87 school year, Dr. Norvell's duties were assigned as 65% teaching, 35% research, and 0% service.

20. During the Fall 1986 term, Dr. Norvell again taught Adult Psychopathology. Her students rated the course as 2.00 and her instruction as 1.70. The respective department mean scores were 1.93 and 1.78.

21. By evaluation letter dated June 3, 1987, Dr. Perry noted that Dr. Norvell's teaching and research continued to be productive. He commended her on receipt of an award for excellence in consulting research. Dr. Perry stated that her participation on a minority recruitment trip represented "outstanding university service." He also noted that her attitude and relationships with colleagues and students was much improved.

22. During the 1987-88 school year, Dr. Norvell's duties were assigned as 53% teaching, 47% research, and 0% service.

23. During the Fall 1987 term, Dr. Norvell again taught Adult Psychopathology. In the confidential evaluations, her students rated the course as 2.82 and her instruction as 2.91, below the respective department mean of 1.87 and 1.75.

24. At hearing, Dr. Norvell asserted that the poor evaluation was caused by the specific class of students enrolled in her course during the Fall '87 term. As support for the assertion, Dr. Norvell provided testimony from another instructor, no longer at the University, who had received poor evaluations from supposedly the same group of students. The evidence does not establish that the poor were due to the specific class of students.

25. On January 11 and 12, 1988, Dr. Perry met with Dr. Norvell to discuss the results of the Fall '87 student evaluation. He expressed concern with her attitude towards students as reflected by the individual student comments in the evaluations. (At that time, the department mean had not been calculated.)

26. Dr. Perry also expressed his opposition to Dr. Norvell's practice, of which Dr. Perry had become aware, of soliciting student evaluations in addition

to the department's standardized confidential evaluations. Dr. Perry believed the practice to be inappropriate, and, at hearing, stated that the practice could have resulted in inflation of the scores resulting from the standardized evaluations. While Dr. Norvell's activity may have been inappropriate, the assertion that such could have resulted in inflated student evaluations is unsupported by evidence.

27. During the January 11-12 meetings, Dr. Norvell asked Dr. Perry if he would support her application for tenure. A faculty member at the Assistant Professor level eventually receives tenure or is terminated following the sixth year of employment. Dr. Perry replied that he could not support her application at that time.

28. By letter to Dr. Perry, dated January 13, 1988, Dr. Norvell wrote that a review of the data "suggests that 89% of all students who have taken the adult psychopathology course regard me as adequate or better." Dr. Norvell stated that she appreciated his concern and requested a formal evaluation of her teaching, including clinical practice.

29. By letter to Dr. Perry, dated January 19, 1988, Dr. Norvell expressed surprise at Dr. Perry's January 12 statement of nonsupport for her tenure application. Dr. Norvell stated, "I am eager to address any issues that you feel are of concern and would like any problem areas articulated so that I may work to correct any existing problems." She further requested that he provide "specific guidelines for remedying those particular problems."

30. By letter to Dr. Norvell, dated January 21, 1988, Dr. Perry expressed "some surprise and considerable disappointment" in Norvell's letter of January 13. In the letter, Dr. Perry recalled, at length, the discussions of January 11-12. According to the letter, the discussions included her use of additional, non-confidential, student evaluations, and her attitude towards students. Dr. Perry stated that students had become apprehensive at the fact that she requested evaluations prior to the close of the course, and that she personally collected written comments from students. He enumerated the reasons he recalled Dr. Norvell having given for the poor evaluation. Dr. Perry also discussed her previous course ratings and his disagreement with her interpretation of the evaluation scores. In concluding the letter, Dr. Perry stated that his concern is not her teaching ability, but her performance. He states that her "teaching performance and your combative rather than collaborative attitude regarding the evaluation is of serious question. As I said in our discussion, I do not want to prejudge the broader tenure evaluation, but if I had to vote at this time, I would not be able to support your candidacy."

31. By letter to Dr. Norvell dated February 10, 1988, Dr. Perry noted that the letters appear to have crossed in mailing, and that he had not received her letter of January 19 prior to his writing of the January 21 letter. He noted that the department mean had become available and that Dr. Norvell's evaluation scores were below the mean. He again stated his recollection of the earlier meetings and, in response to her request for examples of her behavior, wrote "in our discussions, I ha[ve] given you numerous examples of your behavior that I considered to reflect your attitude."

32. Subsequently, Dr. Norvell sent a letter to Dr. Perry, dated March 8, 1988, identical to her letter of January 19, in which she requested specific identification of her problems. Dr. Perry had previously responded to her request. Dr. Norvell was either unable or unwilling to accept his comments.

33. By evaluation letter dated June 21, 1988, Dr. Perry stated that Dr. Norvell's research and clinical teaching remained productive. He acknowledged her service on university committees was appreciated. However he stated that her course teaching and her judgement were unsatisfactory. He further expressed his displeasure with her response to his concerns, and referred to the previous series of letters exchanged. He stated that, although previously there had been improvement in her relationships with colleagues and students, additional improvement was required.

34. Dr. Perry's June 21 letter advised that his concern was "with the great variability in your performance over time and your difficulty in objectively looking at your own role in this variability. Unless individuals can scrutinize their own behavior, it is difficult for them to make any improvement permanent. The improvement is also destined to be temporary to the extent that it is based upon compliance to administrative authority rather than a genuine acceptance that improvement is needed."

35. Although matters related to tenure are supposedly confidential, knowledge of Dr. Norvell's tenure situation appears to have been widespread among faculty and some students. Dr. Norvell discussed the matter with faculty members. Dr. Perry found it necessary to discuss the situation with non-tenured instructors who were aware of the approaching Norvell tenure deliberations and who were personally concerned about tenure practices.

36. During the Summer 1988 term, Dr. Norvell taught an elective course. Her students rated the course as 1.00 and her instruction as 1.00, above the respective department mean of 1.50 and 1.61 respectively.

37. In the Department of Clinical and Health Psychology, a faculty member in Dr. Norvell's position may submit a tenure application in either the fifth or sixth year of employment. Generally, a candidate for tenure applies once. An assistant professor will usually apply for promotion to associate professor concurrently with the tenure application.

38. Dr. Perry suggested to Dr. Norvell that she delay her application until her sixth year. Such would have permitted Dr. Norvell to teach the Adult Psychopathology course again and would have provided an additional set of student evaluations to be considered. Dr. Perry believed such course of action to be advisable in response to the poor evaluation from the Fall 1987 class. Dr. Norvell chose to submit the application in her fifth year.

39. In October, 1988, Dr. Norvell began to prepare her tenure and promotion application. A candidate for tenure is responsible for preparation of the package of materials which are reviewed by appropriate personnel. Dr. Norvell's package included biographical and professional information, letters of professional recommendation, standardized student evaluation results, and previous employment evaluations. The package was completed by early November, 1988.

40. Dr. Norvell's tenure package also included letters written by students supportive of her application. The inclusion of such letters, while unusual, was not prohibited. Dr. Norvell did not review the letters. There is no evidence that Dr. Norvell personally solicited the letters. While several witnesses testified that they believed the inclusion of the letters to be inappropriate, the evidence does not establish that the inclusion of the student letters materially affected the tenure deliberations.

41. There is disagreement as to the availability of evaluations received from Dr. Norvell's clinical students. At hearing, Dr. Perry testified that such evaluations were received from Dr. Norvell's clinical students during the period of her employment and were available for her review. Dr. Perry testified that Dr. Norvell's clinical evaluations during her first two years were below average, but not to a significant degree. He also testified that, during that period, he did not inform Dr. Norvell that such clinical evaluations were below average. Dr. Norvell was apparently not aware that such evaluations had been performed. There is no evidence that actual clinical evaluations were considered by the tenure committee or that such evaluations materially affected the committee's deliberations. Such evaluations were not included in Dr. Norvell's application. Tenured faculty appropriately based their opinions of Dr. Norvell's clinical instruction on personal knowledge of her performance in the clinical practice.

42. Applications for tenure are reviewed by department faculty at a scheduled meeting. The application is discussed and tenured faculty vote by secret ballot. Eight faculty members were eligible to vote on Dr. Norvell's tenure application. Applications for promotion are considered at the same time. All faculty members holding the rank sought by the applicant or higher are eligible to vote by secret ballot on the promotion issue. Nine faculty members were eligible to vote on Dr. Norvell's promotion application. The faculty meeting and balloting occurred in November 8, 1988.

43. At the faculty meeting, Dr. Perry initially expressed his opposition to Dr. Norvell's candidacy. Dr. Perry conceded that her research was distinguished, but argued that neither her instruction nor service were of like quality. Dr. Perry had previously attended all but one faculty meeting related to a tenure decision, and had previously expressed his opinion at such meetings. He had not previously opposed a tenure application.

44. Dr. Norvell asserts that Dr. Perry acted inappropriately in speaking against her application at the faculty meeting during which the Norvell application was considered. The evidence does not establish that Dr. Perry's opposition to Dr. Norvell's application was based on factors other than his personal opinion as to whether she had attained a level of distinction in two of the three criteria for tenure and promotion.

45. There is no evidence that Dr. Perry's opinion affected the deliberations any more than the opinion of any other faculty member. The evidence does not suggest that the outcome of the secret ballot would have been otherwise had Dr. Perry not expressed his opinion. Given the faculty's apparent knowledge of the situation prior to the meeting, it is doubtful that any faculty member entered the meeting unaware of Dr. Perry's opposition to the application.

46. Some of the tenured faculty who participated in the meeting testified at hearing. Of those testifying, one admitted to having felt pressured by Dr. Perry's actions at the meeting, but nonetheless voted in favor of Dr. Norvell's tenure application.

47. One faculty apparently considered his antagonistic personal relationship with Dr. Norvell in reaching a decision and abstained from voting on the tenure issue. Had he voted in favor of her tenure application, as he admitted was probable up until shortly before the faculty meeting, it would have been entitled to additional review. In fact, as discussed below, the application was forwarded for additional review. The abstention by the referenced faculty member was irrelevant.

48. The remainder of the faculty members testifying generally found either her teaching, her service, or both, to be unsatisfactory.

49. The vote on Dr. Norvell's tenure application was three for, three against, and two abstentions. The vote on Dr. Norvell's promotion application was six for, two against, and one abstention.

50. Promotion is rarely granted in cases where a tenure recommendation is negative. Although Dr. Norvell asserted that the results indicate that Dr. Perry pressured faculty to vote against her tenure application, and that the faculty voted otherwise on the promotion application, the evidence does not support the assertion. It is more likely, as witnesses testified, that the favorable vote on promotion was with due regard to her distinction in research.

51. Subsequent to consideration and voting by department faculty, applications for tenure and promotion may be forwarded to the college level for further consideration if either the department faculty or the department chairman recommend an award of tenure. If the application receives a negative recommendation from both the faculty and department chairman, the application is not forwarded. However, given the circumstances of this situation, the Norvell application was forwarded for college level review even though neither the tenured faculty nor department chairman Perry recommended the granting of tenure.

52. Applications for tenure and promotion within the College of Health Related Professions are reviewed by the college dean and the advisory Tenure and Promotion Committee. The committee members represent the several departments in the college. Six tenured faculty members, two of whom had participated in the previous tenure meeting, were members of the committee which considered Dr. Norvell's application. Dr. Perry was one of the persons on the committee.

53. Due to the circumstances of the case, Dr. Perry was instructed, either by the college dean, the committee, or both, that he was not to participate in the college level deliberations. Generally, the appropriate department chairman forwards the application package with a transmittal letter and fully participates in the process.

54. Dr. Perry initially decided not to provide such a transmittal letter. Upon learning that Dr. Perry would not be writing a letter, Dr. Norvell wrote and mailed a letter of her own to the college dean and committee members. Dr. Norvell's letter, dated November 23, 1988, expressed her opinion towards Dr. Perry. Dr. Norvell's letter charged that Dr. Perry's opposition to her application was of a personal nature, and stated "[i]f the tenure committee and Dean of the College of Health Related Professions is willing to objectively review my credentials I know I will receive tenure and promotion."

55. After learning that Dr. Norvell had delivered her letter, Dr. Perry wrote a transmittal letter, dated November 14, 1988, in which he addressed Dr. Norvell's application for tenure and explained the rationale for his opposition to her application. Dr. Perry attended the committee meeting and read the letter to the members. He thereafter excused himself and did not participate in the deliberations or the vote.

56. The committee reviewed the tenure package prepared by Dr. Norvell. Following the discussion, the committee voted by secret ballot. The result of the vote on the tenure application was five against and one absent. The result

of the vote on the promotion application was five abstentions and one absent. One member of the committee testified that he abstained on the issue of promotion because promotion was rarely awarded without tenure, and saw no reason to do otherwise.

57. Dr. Norvell asserts that Dr. Perry acted inappropriately in speaking against her application at the College meeting during which the Norvell application received further consideration. Dr. Perry was prepared to submit the application to the committee without further comment. He subsequently chose to do write the letter in response to Dr. Norvell's letter accusing Dr. Perry of personal bias. The evidence does not establish that under the circumstances, Dr. Perry's letter was inappropriate.

58. Following the committee vote, the Norvell application was submitted to the Dean of the College of Health Related Professions, Dr. Richard Gutekunst, for review. Dr. Gutekunst reviewed the committee's recommendation and the application package. He determined that, although Dr. Norvell's research was acceptable, her teaching was inconsistent and unsatisfactory. He also determined her service to be undistinguished. He denied the application for tenure and promotion.

59. The University of Florida has adopted rules which identify the requirements for tenure. Rule 6C1-7.019(3), Florida Administrative Code, provides that the criteria for the granting of tenure shall be relevant to the performance of the work which the faculty member has been employed to do and to the faculty member's duties and responsibilities as a member of the University community. The criteria recognize three "broad categories of academic service" including instruction, research, and service. To attain tenure, a faculty member must achieve "distinction" in at least two of the three "broad" categories. "Distinction" is defined as "appreciably better than the usual college faculty member of the candidate's present rank and field".

60. During Dr. Norvell's employment with the University of Florida, her primary responsibilities were teaching and research. Beyond the service expected of all faculty members, such as participation on departmental committees and attendance at meetings, Dr. Norvell had minimal service responsibilities.

61. Though minimal or no service duties were assigned to Dr. Norvell during her employment at the University, she performed minor service activities and was commended on her service in the annual evaluations. Dr. Norvell asserts that such service should be considered as part of the tenure evaluation. The administrative rules state that tenure criteria is applied in relation to the duties for which the candidate was employed. Accordingly, Dr. Norvell's service is minimally relevant to the tenure decision. Even if it the evidence does not establish that such service was appreciably better than the usual college faculty member of the candidate's present rank and field.

62. The University concedes that Dr. Norvell's research was distinguished. Accordingly, to receive tenure, Dr. Norvell must also achieve distinction in instruction. The evidence does not establish that Dr. Norvell's instruction was of distinguished quality. As judged by the student evaluations obtained confidentially from students in her classes, and from faculty familiar with Dr. Norvell's clinical practice, Dr. Norvell's teaching was inconsistent. The evidence fails to establish that Dr. Norvell's instruction was appreciably better than the usual college faculty member of the candidate's present rank and field.

63. In claiming that Dr. Perry acted in opposition to her application for personal reasons unrelated to her qualifications for tenure and promotion, Dr. Norvell related anecdotal information which she asserted demonstrated his personal bias. The evidence does not support her claim that Dr. Perry acted for personal reasons.

CONCLUSIONS OF LAW

64. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. Section 120.57(1), Florida Statutes.

65. The Petitioner has the burden to establish that the allegations of her petition are correct. *Florida Department of Transportation v. J.W.C. Co., Inc.*, 396 So.2d 778 (Fla. 1st DCA 1981). The burden has not been met.

66. The University of Florida has adopted administrative rules governing tenure and promotion of faculty members. "Tenure" is defined as that condition attained by the faculty member in an academic department, through distinction in teaching, research, ... service and contributions to the University and the profession. Rule 6C1-7.019(1)(a), Florida Administrative Code. "Promotion" is defined as the assignment of a faculty member to a higher academic rank. Rule 6C1-7.019(1)(b), Florida Administrative Code. Decisions to promote or to grant tenure, although not identical, differ more in emphasis than they do in kind. The awarding of promotion without tenure should rarely occur. Rule 6C1-7.019(1)(c), Florida Administrative Code.

67. Rule 6C1-7.019(3)(a), Florida Administrative Code identifies the criteria used in tenure and promotion determinations as follows:

The criteria for promotion or for granting of tenure" shall be relevant to the performance of the work which the faculty member has been employed to do and to the faculty member's duties and responsibilities as a member of the University community. The criteria recognize three broad categories of academic service as follows:

1. Instruction, including regular classroom teaching, direction of theses and dissertations, academic advisement, extension activities, and all preparation for this work including study to keep abreast of one's field.
2. Research or other creative activity including publications.
3. Public, professional, or University service.

68. Rule 6C1-7.019(3)(b), Florida Administrative Code further provides:

The work for which a faculty member is responsible... should be made clear to the faculty member at the time of employment and shall be reviewed at subsequent intervals at least annually, since the faculty member's assignment may vary with the passage of time.... In most cases, promotion and tenure should require distinction in at least two of the three categories, one of which should be that of the faculty member's primary responsibility... "Distinction", as used in this context, means appreciably better than the usual college faculty member of the candidate's present rank and field.

69. Tenure and promotion applications are initially reviewed at the departmental level and voted upon by secret ballot of tenured faculty. The department chairman reports the results of the faculty vote to the dean of the college. If either the faculty or the department chairman recommend tenure, the application is forwarded to the college level for further review. Rule 6C1-7.019(5)(b)(1), Florida Administrative Code. In the instant case, Dr. Norvell's tenure application was forwarded for college level review even though neither the faculty nor the department chairman recommended approval of the application for tenure. The faculty did recommend her application for promotion, Dr. Perry did not.

70. Subsequent to review by the college level tenure committee, the application is forwarded to the dean of the college for review. If the dean recommends approval of the application, the application is forwarded to the appropriate University vice-president for additional action. Rule 6C1-7.019(5)(b)(2), Florida Administrative Code. Dr. Norvell's application for tenure and promotion did not receive the recommendation of either the college tenure committee or the dean. Accordingly, the application did not receive further review.

71. There is no evidence that the University failed to abide by the relevant administrative rules in acting upon Dr. Norvell's application for tenure and promotion.

72. The University concedes that Dr. Norvell's research was sufficiently distinguished to qualify her for tenure. However, the University asserts that Dr. Norvell's teaching was undistinguished.

73. Dr. Norvell's student evaluations demonstrate the variable quality of her teaching. In one of her letters to Dr. Perry, Dr. Norvell asserted that a large percentage of her students had found her instruction to be "adequate" or better. The evidence does not demonstrate that such instruction is appreciably better than the usual college faculty member of the candidate's present rank and field.

74. Dr. Norvell asserts that her election as teacher of the year during the same relative period as her poorest student evaluations were recorded indicates that the student evaluations are unreliable or contradictory. While Dr. Norvell's victory is commendable, such a department-wide election is a less reliable measure of her teaching ability than are confidential evaluations obtained in a standardized form from students enrolled in a course during a specific term. Further, the fact that Dr. Norvell could win a teacher of the year election during the same period that her student evaluations were below average could be seen as further evidence of her inconsistent instruction, given that such elections would be open to students other than those enrolled in the specific course evaluated.

75. Dr. Norvell asserts that her service meets the criteria for tenure. The University replies that Dr. Norvell's service responsibilities were insignificant or nonexistent.

76. The evidence demonstrates that Dr. Norvell was assigned either minimal or no "service" duties. Although Dr. Norvell performed minor service during her employment, the tenure criteria state that the granting of tenure shall be relevant to the performance of the work which the faculty member has been employed to do. Dr. Norvell was not assigned substantive "service" responsibilities as a part of her employment. Further, the evidence fails to establish that her performance of such service duties as were assigned achieved distinction. Other than a recruitment trip to another University, the service provided by Dr. Norvell consisted in large part of activities which were expected of all faculty members. The successful completion of the recruitment trip does not establish that service during her University of Florida employment achieved distinction.

77. As to Dr. Perry's role in the departmental faculty's consideration of the application, the evidence does not establish that Dr. Perry acted inappropriately. Although Dr. Norvell asserts that Dr. Perry's personal bias served as the basis for his opposition to her application, the evidence does not support the assertion. The evidence does establish that neither Dr. Norvell's teaching nor service reached a level appreciably better than the usual college faculty member of the candidate's present rank and field.

78. Extensive testimony was elicited related to Dr. Perry's expression of his opposition to Dr. Norvell's application, both to the tenured faculty and to the college tenure committee. Dr. Perry had not previously opposed a tenure application. However, Dr. Perry, as a faculty member, should not be precluded from opposing one tenure application solely because he had not opposed others.

RECOMMENDATION

Based on the foregoing, it is hereby

RECOMMENDED that the University of Florida enter a Final Order dismissing the Petitioner's petition for tenure and promotion.

DONE and RECOMMENDED this 9th day of March, 1990, in Tallahassee, Florida.

WILLIAM F. QUATTLEBAUM
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 9th day of March, 1990.

APPENDIX
CASE NO. 89-0144

The Petitioner filed proposed findings of fact which included, identified as "notes", comments as to the reliability of testimony and evidence. Such "notes" are regarded as argument and are rejected as subordinate. The following constitute rulings on proposed findings of facts submitted by the parties.

Petitioner

The Petitioner's proposed findings of fact are accepted as modified in the Recommended Order except as follows:

12. Rejected, not supported by the cited testimony. Dr. Perry did not evaluate her service as outstanding in her first year. He did commend her in her third year on her outstanding service related to the minority recruitment trip, a year in which she had no assigned service responsibilities.

13-14. Accepted as to the statements excerpted from the letters of evaluation, however, it is noted that additional information was included in the evaluations which was less favorable.

16. Rejected, not supported by greater weight of evidence.

17. Rejected, contrary to the evidence and to the Petitioner's assertion that Dr. Glaros was not Dr. Norvell's supervisor.

20. Rejected, not supported by the greater weight of evidence.

21. Rejected, immaterial. Issue is whether Petitioner met the criteria for award of tenure.

23. The reference to clinical evaluations is rejected, irrelevant.

24. Reference to Dr. Perry's discussions with "junior" faculty is rejected, contrary to the greater weight of evidence.

28. Rejected, Dr. Bauer's favorable vote would have permitted further review of application, which occurred despite his abstention, immaterial.

29-30. Rejected, contrary to the greater weight of evidence.

31. Although the Findings of Fact note the Petitioner's election as Teacher of the Year, such is found to be less persuasive or reliable than standardized student evaluations.

34. Rejected. The greater weight of evidence establishes that Dr. Perry was instructed not to participate and did not participate in the college level deliberations. The evidence does not establish that he was instructed not to attend.

35-36. Rejected, unnecessary. The fact that committee members would consider the department chairman's opinion to be persuasive does not establish

that Dr. Perry acted, inappropriately in expressing his opinion of Dr. Norvell's qualifications. Dr. Perry's letter was written in response to Dr. Norvell's allegations of personal bias.

37. Rejected. Not supported by greater weight of evidence.

39-41. Rejected. Not supported by greater weight of evidence.

Respondent

The Respondent's proposed findings of fact are accepted as modified in the Recommended Order except as follows:

12. The reference to clinical evaluations is rejected, irrelevant

13. Rejected, unnecessary.

19. The reference to clinical evaluations is rejected, irrelevant.

27. The reference to clinical evaluations is rejected, irrelevant. Last sentence rejected, unnecessary.

34. Rejected, irrelevant.

35-36. Rejected, unnecessary.

42-43. Rejected, irrelevant. The referenced vote had no effect.

44-46. Rejected, cumulative.

56. Rejected as to the manner in which Dr. Perry received notification that he was not to participate in the committee deliberations, immaterial.

58. Rejected, unnecessary.

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