

Draft Minutes of 30 March 2015 SACUA
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THE UNIVERSITY OF MICHIGAN
Senate Advisory Committee on University Affairs (SACUA)
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Present: Oey, Holland, Lehman, Masten (chair), Mondro, Oey, Smith, Weineck, Ziff, Potter; Schneider, Snyder

Absent: Holland, Smith, Schultz, Richstone, Fogerline, Wright

Guests: Provost Martha Pollack, Christine Gerdes (Office of General Counsel), Kelly Cunningham (Provost's Office)

MATERIALS DISTRIBUTED

1. Draft agenda
2. Draft minutes of 23 March 2015 SACUA
Provost's response to SACUA feedback on Proposed SPG: Temporary Removal of faculty for Lack of Fitness for Duty
3. Provost's response to "SACUA Report on Office of Institutional Equity Procedures and Conduct, Confidential Executive Officer Version, February 9, 2015
3. Draft Guidance on Grievability under the University of Michigan 2010 Model Grievance Procedures, undated

Chair Masten convened the meeting at 3:11 P.M. The draft agenda was approved.

CONSIDERATION OF MINUTES

Consideration of the minutes of March 23 was postponed.

ANNOUNCEMENTS

1. SACUA will be meeting with the Regents on April 16.
2. Provost Pollack will be unable to attend her previously scheduled meeting with SACUA on April 13 due to a scheduling conflict.
3. There are now two more cases involving OIE, bringing the number to 10.

3:16: John Lehman moved that SACUA forward questions to people involved in OIE investigations to solicit information about the handling of their cases. The motion carried unanimously. Professor Mondro suggested that SACUA approve a target date for return

of the survey questions. In response to Professor Weineck's suggestion that the OIE Report be distributed more broadly to faculty, Professor Masten suggested that the SACUA newsletter would be a good vehicle for this purpose. Professor Weineck agreed to draft the next SACUA newsletter.

4. Laura Patterson has offered to come back to SACUA
5. SACUA has been contacted by a student group advocating divestment of fossil fuel stocks

3:25 Status reports

- Model and Unit Grievance Procedures and Ongoing Grievances
 - Rich Friedman and Rex Holland will be serving as FGMs for the two current grievances.
- Office of Institutional Equity procedures
 - Discussion turned to the OIE procedure. Professor Oey noted that the Provost agreed that the response to SACUA presentation was tone deaf. Professor Professor Potter raised the issue of why Deans are involved once OIE has been involved as Deans have been acting as complainants and judges. Professor Lehman raised the issue of the evaluation of OIE personnel.
- Fitness for Duty and Professional Standards for Faculty SPGs and Tenure
 - Professor Masten noted that the Provost's response on the proposed Fitness for Duty SPG included language indicating that concerns for fitness for duty should be medical. Professor Weineck pointed out that there are issues connected with the way that mental illness is defined in the Fitness for Duty process. Professor Lehman raised the point that SACUA needs to deal with professional standards for faculty.
- Unit deviations from University-wide policies and procedures
- Total compensation propriety and transparency
- Administrative Services and IT Rationalization, implementation and oversight
- Unizin/Canvas, implementation and oversight
- Senate Rules Amendments

3:30 Guests: Provost Martha Pollack with Ms. Christine Gerdes

Professor Masten noted that comments on the Provost's response to SACUA's OIE report and the Fitness for Duty SPG during today's meeting should be viewed as those of individual SACUA members, not a formal SACUA response, as SACUA has not yet met to discuss the provost's responses.

Provost Pollack said that her Office had finalized the Fitness for Duty SPG and said the wording was modified based on SACUA's input so that it is clearly designed for a specific situation.

Professor Lehman asked Provost Pollack if the response on the OIE document was an effort to limit liability. Provost Pollack said that she consulted legal staff but she

did not have a chance to edit the response from counsel given that it is budget and promotion season. She said that she is interested in working with SACUA on the issues raised by the document.

Professor Weineck asked if the Provost disagrees with SACUA's findings. Provost Pollack said that she will not deal with the three cases discussed in the memo; her interest is in working on process rather than the specific cases.

Provost Pollack then reviewed the response:

1. It is important that the procedures are not rigid and set in stone; for example, it needs to be possible to cut off investigations at an early stage when there is no supporting evidence or it might be necessary to move more rapidly in cases where retaliation is alleged to be occurring.
 - a. Professor Masten noted that these variations should not be allowed to short circuit procedures for, e.g., permitting Complainants and Respondents from having the opportunity to review OIE draft summaries of statements.
 - b. Provost Pollack noted that they need to be able to get rid of spurious complaints etc.
 - c. Professor Oey noted that in some cases there may be a lack of documentation as to the need for flexibility.
2. Provost Pollack said that there have already been changes to OIE procedures in response to comments from respondents. They are trying to do the same thing for administrator initiated cases. There is an interest in developing a two stage process, the first stage being to inform the respondent that an investigation will be opened, the second stage would be the actual investigation.
3. Provost Pollack addressed the appeal process noting that both respondents and complainants would need to be able to appeal the result of an investigation. The Provost is exploring the possibility that the grievance process could be used for appeals. The Provost's Office might put out information about how the grievance model can be adjusted. She hopes to have something more specific, adding that she felt it would be best not to create an additional judicial process.
4. Provost Pollack said that 5.09 will always be used for demotion and dismissal. The issue, according to Professor Masten is defining what constitutes demotion.

Provost Pollack stated that two of the cases in the report have been grieved. Professor Masten said that the problem was that OIE tells Respondents that they can only grieve the sanction, not the decision.

Professor Weineck raised the issue of faculty involvement with the investigative process, pointing out that two of the three cases clearly involved academic judgments and would have resulted in different conclusions had faculty reviewed the cases." Provost Pollack said that legally we need people with deep expertise in sexual and other forms of harassment situations to investigate these matters. Professor Masten clarified that SACUA does not want to investigate cases, only to review them.

Provost Pollack would like to meet with SACUA on the OIE issue before the end of the summer and get input before the response is finalized.

Professor Mondro asked if the OIE concern would be outlined in the initial notification to the respondent.

Ms. Gerdes said that the new notification template gives more detail than in the past, stating that X has filed a complaint with respect to Y. She will send the template to SACUA.

The discussion turned to Fitness for Duty. Professor Masten said that we were pleased to see the medical condition restriction added. The policy uses the long-term disability schedule for compensation, but faculty whose duties are reduced might not qualify for long-term disability. A claim for long-term disability can be rejected if a person can recover within twelve months. Ms. Gerdes said that the language in note 1 was not tied to Long Term Disability (LTD), the chart from LTD was imported so that a new table would not be drafted for people who would be eligible for retirement under the policy. Provost Pollack noted that the issue was not with Fitness for Duty, but rather with the way the LTD policy is written. Professor Weineck raised the issue of compensation during appeal. Provost Pollack pointed out that we have generous long-term sick leave. Professor Masten pointed out that a problem is that faculty who are most likely to be subject to the Fitness policy may already have used up their sick leave. The question arose of whether or not an administrator might attempt to employ the Fitness for Duty policy to remove a faculty member as a cost saving measure. In Provost Pollack's view, the adverse consequences of someone saying to a faculty member that he/she cannot do his/her job out of a desire to save money would be such as to prevent this from happening. There is a sense that there will be very few cases. Provost Pollack stated by far the biggest concern faculty had was that it be clear that the policy had to do with health issues. Provost Pollack said that while protecting privacy she will let SACUA know if there are issues. Provost Pollack suggested that SACUA send their questions regarding Fitness for Duty to her, rather than attempting to address them on the spot, but explained that she will prioritize the OIE issues.

The discussion turned to other matters.

1. Provost Pollack noted that she was nearing the end of budget season, and that the Provost's office is beginning promotion and tenure season. She mentioned interesting academic initiatives in the context of the budget, and that the president's advisory committee is at work on medical and biological sciences. We are looking at ways that other successful universities are dealing with biological science programs.
2. How can units customize policies and procedures? The question has come up in tenure procedures: there are Provost Office guidelines, but units may also adopt their own tenure procedures. Which guidelines have precedence, unit procedures or the provost's if there is a conflict? Provost Pollack said this is not a question that can be answered in the abstract. SACUA remains interested in clarifying which policies are mandatory, and which are customizable.

Provost Pollack stated that all promotion decisions will come out at one time as she is making recommendations to the president who makes a recommendation to the Regents. There are more than 200 cases. Announcements will follow the Regents Meeting on the third Thursday in May.

There will be a lot of Dean turnover in the coming academic year, 6 deans will be appointed (Kinesiology, SNRE, Social Work, Nursing, Education and Engineering).

Provost Pollack and Ms. Gerdes left at 4:11.

4:12 Office of Institutional Equity Report

Professor Masten said we will require more time to discuss things in more detail. The issue is whether there should be resolutions at Senate Assembly about the OIE report. Professor Lehman suggested that we should collect the data from the surveys. Professor Masten said that he was troubled that redress for the sanctioned faculty cannot be redressed. The grievances that had been filed in the OIE cases were structured to challenge the sanctions. In one case the issue was ruled non-grievable, in another case the GHB noted due process issues.

4:18 Proposed Fitness for Duty SPG. Further details will be discussed next week. Professor Lehman noted that we need not put much more effort in this case. Professor Weineck noted that there is possibly a case pending. We will need to think about presenting it to Senate Assembly.

4:25 SACUA officer election options—Professor Masten discussed various options for taking a vote, either through proxy or electronically.

The vote will be electronic, candidates will be able to post statements. There will be a one-time, link sent to voting members. There is an anonymous survey option on Qualcom. The two elections will be done in sequence, chair first then vice chair. The election will this week. Professors Weineck and Lehman are standing for Chair. Professor Schultz has indicated that he will run for Vice Chair. Statements should be no longer 250 words, and the election will take place when the process can be set up. The proposal was approved.

4:34 SACUA Guidance on Grievability under the University of Michigan 2010 Model Grievance Procedures

Professor Masten urged members to read the document, as it deals with the reasons can be rejected. The two issues are that:

1. A grievance cannot be denied on the grounds one can grieve a procedure but not the decision; decision makers must be able to articulate the reasons for the decision being grieved;
2. A GHB should not ordinarily issue a summary judgment that a matter is not grievable, the point is to set a higher standard for rejecting a grievance

4:50: Student interest in divesting fossil fuels. There are processes for discussing divestment issues Professor Masten will circulate materials.

4: 54 Adjournment

Respectfully submitted,

David S. Potter
Interim Senate Secretary

University of Michigan Bylaws of the Board of Regents, Sec. 5.02:
Governing Bodies in Schools and Colleges
Sec. 4.01 The University Senate

"...[t]he Senate is authorized to consider any subject pertaining to the interests of the university, and to make recommendations to the Board of Regents in regard thereto. Decisions of the University Senate with respect to matters within its jurisdiction shall constitute the binding action of the university faculties. Jurisdiction over academic policies shall reside in the faculties of the various schools and colleges, but insofar as actions by the several faculties affect university policy as a whole, or schools and colleges other than the one in which they originate, they shall be brought before the University Senate."

Rules of the University Senate, the Senate Assembly and the Senate Advisory Committee on University Affairs:

Senate: "In all cases not covered by rules adopted by the Senate, the procedure in Robert's Rules of Order shall be followed."

Assembly: "The Assembly may adopt rules for the transaction of its business. In appropriate cases not covered by rules of the Assembly, the rules of the University Senate shall apply."

SACUA: "The committee may adopt rules for the transaction of its business."

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