



Draft Minutes of 16 December 2019

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THE UNIVERSITY OF MICHIGAN  
SENATE ASSEMBLY MEETING  
Monday, 16 December 2019, 3:00  
Palmer Commons, Great Lakes Central Room

**Present:** Ahbel-Rappe (by virtue), Ali, Beatty, Byon, Castilho, Chen, Conway (by virtue), Dal Cin, DiFeo, Dinov (by virtue), Fabilli, Fenno, Finlayson, Gnedin, Herbert, Huang, Indjejikian, Jones, Kahle, Kahn, Lagisetty, Lepri, Liu, Malek (by virtue), Marsh (by Virtue), Meek , Meyer, Morgan, Myers, Passey, Rao, Sandhu, Shtein, Singer, Snyder, Spencer (by virtue), Subramanian, Suwanabol, Tonomura, Trumpey, Van Berkel

**Alternate Requested:** Barzilai (LSA) , Butt (SEAS), Kattari (SSW), Partridge (LSA), Sales (Medicine), Traynor (Medicine)

**Alternate Present:** Donnelly (Medicine), Boccaccin (LSA)i, Puthenvedu (Medicine), Maguire-Jack (SSW)

**Absent:** Andrias (Law), Bawardi (UM Dearborn), Blackburn(SSW), Carver (Pharmacy), Caulfield (LSA), Chen (Kinesiology), Costa (Nursing), Gallo (by virtue), Hartley (LSA), Jenkins (Engineering), Junghans (Arch & Urban Planning), Kannatey-Asibu (Engineering), Knoblauch(Arch & Urban Planning),, Kosnoski (UM Flint), Laurence (UM Flint), Liang (Engineering), Manera (by virtue), Mao (LSA), McInnis(Medicine), Mendlow (Law), Nelson (Medicine), Papaleontiou (Medicine), Shah (LSA), Soloway (Engineering), Toyama (Information), Turnley (Art & Design), Wang (Public Health), Wright (Business), Zhu (Pharmacy)

3:05: Call to Order, Approval of Agenda and Minutes

Chair Beatty opened the meeting, and reported that there were no minutes because there had not been a quorum at the November Senate Assembly meeting.

Chair Beatty reported on the November Regents' meeting, which was held at the University of Michigan Golf Course. She said there was a large student contingent that made a demonstration about Carbon Neutrality, focusing on the University's plan to develop a \$670 million coal-fired facility. The Regents voted the proposal down.

Chair Beatty said she had met with the Central Student Government (CSG) chair and will be meeting with the leadership of the Lecturers Employee Organization (LEO) and the Graduate Employees Organization (GEO) She said CSG is focusing on student mental health services and on promoting greater awareness for student mental health issues. CSG is also concerned with the prosecution of students who participated in the sit-in at President Schlissel's office in the winter term of 2019.

Professor Trumpey from the Penny Stamps School of Art and Design said that he is working with Professor Samer Ali and the working group on Carbon Neutrality (<http://sustainability.umich.edu/news/president%E2%80%99s-commission-carbon-neutrality-announces-internal-analysis-teams>) in making a concerted effort to get the Regents to understand how far behind the University of Michigan is in addressing Carbon Neutrality. He asked the Senate Assembly to help his group gather 1500 faculty signatures for a letter addressing the issue. Chair Beatty said the letter will be distributed to the Senate Assembly, and SACUA will discuss distribution to the Senate (<https://docs.google.com/document/d/1Z1owB-awgZhxMuwnPdEh9bbxiguca6sExyZ0-8gDHOo/edit>).

3:13 Committee for Civil Rights and Liberties (CCRL) Motion

The motion is appendix 1.

Professor Belmont said that students who have been accused of sexual assault are allowed under the new Student Sexual Misconduct Policy to cross-examine those whom they are accused of sexually assaulting. He said that the Committee feels that this is a bad practice. Professor Marsh asked if the point of the Committee's proposal would be to keep people physically apart. Professor Belmont said the Committee wanted to eliminate direct contact between the respondent and the complainant, which would not prevent fact-finding. Professor Indjekian said the policy could use more specifics (e.g., how to pay for the policy). Professor Meyers said the Academic Affairs Advisory Committee (AAAC) had issues connected with the resolution and Professor Singer added that AAAC sent a letter to CCRL which would be taken as feedback on its proposal. Chair Beatty says the CCRL deals with students while AAAC deals with faculty issues. A Senate Assembly member said she had experience as an advocate in a Canadian University where complainants and respondents would be kept apart. Professor Shtein asked what would happen between the resolution and the completion of the revised policy. Professor Singer said that AAAC had the same concern. Chair Beatty said that it was unlikely that this would come back to Senate Assembly. Librarian Kahn said that Senate Assembly has no control over policy, but that it would therefore be useful to have this statement in place. Professor Shtein asked if it was possible to amend the proposal. Chair Beatty said that would not be possible.

Professor Conway moved the motion; Librarian Kahn seconded the motion.

The motion carried 41-0-2

3:37 Beatty introduced topics for table top discussions

1. Office of Institutional Equity (OIE) and grievance processes
2. Open access concerns

4:05 Chair Beatty called the group back together and asked for views on the OIE and grievance topics. Each table reported the relevant highlights from their discussion.

Professor Conway said that members at her table noted that few people had experience with grievances and discussed the way Grievance Hearing Boards GHB are assembled and trained. She said there was concern about the way international scholars are treated, whether issues connected with these scholars are handled according to the standard procedures, and that there had been questions about SACUA's role on discussing the issue of international scholars. She also noted concern about the differential power relationship between University and an individual caught up in a grievance process.

Professor Conway pointed out that OIE faced dilemmas, such as when a case involves two students in the same class, or a student and a graduate assistant. Standard practice dictates the removal of a student from a section during the period of the investigation, but there is uncertainty as to the impact of such separation on a student given the length of time involved in an OIE investigation. She suggested that the incoming OIE director could be asked for clarity.

Professor Meyer said there are unintended consequences if people think that an OIE report will result in a full-scale investigation, and Librarian Spencer discussed conversations she has had with people who require confidential counselling. She said there were questions about who has access to the grievance process, and whether it is possible to file a grievance without going directly to Academic Human Resources. She said there was interest in developing a standard grievance process throughout the university, as well as about the length and quality of OIE investigations.

Next, Chair Beatty asked the group for comments on the open access question.

Professor Malek said the issue of open access is complicated, with diverse opinions according to disciplines. Professor Potter stressed the importance of conventional publishing outlets such as University Presses which make research in the Humanities available to the general public. Professor Dinov stated his

view that a Print on Demand model will become standard in the 21<sup>st</sup> century, along with author subventions. He said that most of the scientific community is trying to deliver their material through open access venues.

Librarian Kahn said there was a wide-ranging discussion at her table, and said that faculty can discuss Open Access with librarians. She noted that Open Access is not always the best method of distribution for every discipline, and that authors who can make money off their books should be allowed to do so. She said that librarians could help people discuss publication agreements with journals. She also noted the importance of discussing Open Access with respect to tenure and promotion guidelines (one issue is whether an Open Access publishing is considered vanity publishing). Finally, she said that funds are available to help people seeking to publish through Open Access venues.

Professor Malek asked if faculty should be requesting money for publication support. Librarian Kahn noted that people in the sciences could face very high publication costs, but that article processing charges can be reduced in journals to which the University subscribes. She added that there is inconsistency across disciplines with respect to digital scholarship in promotion and tenure, that the humanities will tend to favor long-form publishing, that in science and engineering the main concern is high impact, and that most open access journals charge very high fees for publication. Subsequent to the meeting she provided the following links to sources of funding for open access projects:

[Open Access, "Discounts and Funding for U-M Authors"](#) [part of the Library's larger guide to [open access](#)]

[TOME program](#) for open access monographs

[Understanding and negotiating publication agreements](#) from the University Library

[Model Publishing Contract](#) for monographs

“Pay it Forward” (a report from UC Davis)(<https://www.library.ucdavis.edu/icis/uc-pay-it-forward-project/>)

Librarian Kahn drew attention to the major conclusions of the UC Davis report which are that:

1. “For the most research-intensive North American research institutions, the total cost to publish in a full article processing charge-funded journal market will exceed current library journal budgets;”
2. “This cost difference could be covered by grant funds, already a major source of funding for publishing fees; *but*” [emphasis added]
3. “Ultimately, author-controlled discretionary funds that incentivize authors to act as informed consumers of publishing services are necessary to introduce both real competition and pricing pressures into the journal publishing system. Discretionary funds for authors exist today, in the form of research grants, personal research accounts, endowed chair funds, and departmental funds, but the consistent application of these funds for this purpose would, in some cases, require new funding from the institution.”

Professor Rao noted that journals build a reputation, and that major journals such as *Cell*, *Science*, and *Nature* have their own second tier journals, which publish more articles, but with a lesser impact factor. He said there are artificial limits on what will be published in major journals and that faculty provide peer review for free, hoping they will get a better reception when they submit something. After the meeting he shared the following letter highlights support from Elsevier and almost every major medical society to resist potential federal policies that support “immediate free access” for journal articles (<https://presspage-production-content.s3.amazonaws.com/uploads/1508/coalitionletteropposinglowerembargoes12.18.2019-533032.pdf>).

4:30 Adjournment

Respectfully submitted

David Potter  
Senate Secretary

## Appendix

### A resolution to rescind the Interim Policy

Whereas, the University of Michigan adopted an Interim Policy and Procedures on Student Sexual and Gender-Based Misconduct and Other Forms of Interpersonal Violence (the “Interim Policy”) on January 9, 2019<sup>1</sup>

Whereas, the Interim Policy holds that a hearing “to obtain information [...] is necessary to make a determination of whether a Policy violation occurred” is expected<sup>2</sup> and that a “typical hearing may include [...] questions by one party to the other”<sup>3</sup> such as an “individual who is reported to have committed Prohibited Conduct” questioning “an individual who is reported to have experienced Prohibited Conduct,”<sup>4</sup> where Prohibited Conduct includes “sexual assault, sexual and gender-based harassment, intimate partner violence, stalking, retaliation, and violation of interim measures;”<sup>5</sup>

Whereas, the Interim Policy holds “a Claimant, a Respondent or witness may have an adviser of their choice”, though “the adviser may not present evidence on a party’s behalf, present argument, examine witnesses, testify, disrupt, or otherwise obstruct the meeting or Proceedings;”<sup>6 7</sup>

Whereas, though the Umbrella Policy holds “a Complainant and a Respondent may have an adviser [...] an individual chosen by a party to provide support and guidance during the review of a report of Prohibited Conduct”<sup>8</sup>, such as “an advocate and/or an attorney,”<sup>9</sup> it is unclear whether an adviser or an equivalent representative may be permitted to cross-examine a witness;

Whereas, the Supreme Court has held “where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses”<sup>10</sup> as it is often critical to resolving factual disputes, a value to both claimants and respondents, and serves the goal of reaching legitimate and fair decisions;

Whereas, the United States Court of Appeals for the Sixth Circuit has recognized that “Universities have a legitimate interest in avoiding procedures that may subject an alleged victim to further harm or harassment. And in sexual misconduct cases, allowing the accused to cross-examine the accuser may do just that;”<sup>11</sup>

Whereas, the United States Court of Appeals for the Sixth Circuit has recognized that “an individual aligned with the accused student can accomplish the benefits of cross-examination—its adversarial nature and the opportunity for follow-up—without subjecting the accuser to the emotional trauma of directly confronting [an] alleged attacker;”<sup>12</sup>

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<sup>1</sup> University of Michigan, Interim Policy and Procedures on Student Sexual and Gender-Based Misconduct and Other Forms of Interpersonal Violence (January 9, 2019), <https://studentsexualmisconductpolicy.umich.edu/files/smp/SSMP-Policy-PDF-Version011519.pdf>.

<sup>2</sup> Id. § XIII.B.7 <https://studentsexualmisconductpolicy.umich.edu/content/b-hearing> (emphasis added).

<sup>3</sup> Id., § II <https://studentsexualmisconductpolicy.umich.edu/content/ii-whom-policy-and-procedures-apply> (emphasis added).

<sup>4</sup> Id., § II <https://studentsexualmisconductpolicy.umich.edu/content/ii-whom-policy-and-procedures-apply>.

<sup>5</sup> Id., § I <https://studentsexualmisconductpolicy.umich.edu/content/policy-statement>.

<sup>6</sup> Id., § XIII.6 <https://studentsexualmisconductpolicy.umich.edu/content/xiii-investigative-resolution> (emphasis added).

<sup>7</sup> Goldberg v. Kelly, 397 U.S. 254, 269 (1970) (emphasis added).

<sup>8</sup> University of Michigan, Ann Arbor Student Procedures, Dearborn Student Procedures, Flint Student Procedures, § VII.A.6 (pg. 10).

<sup>9</sup> Id.

<sup>10</sup> Goldberg v. Kelly, 397 U.S. 254, 269 (1970) (emphasis added).

<sup>11</sup> Doe v. Baum, 903 F.3d 575 (6 th Cir. 2018).

<sup>12</sup> Id. (emphasis added)



Whereas, the University has recognized “allowing an accused student to confront the claimant directly may subject an alleged victim to further harm or harassment” and that “fear of having to confront, and discuss in detail, a sexual assault with the very individual accused of having committed the assault may well lead alleged victims not to report cases in the first instance;”<sup>13</sup> and

Whereas, the University adopted the Interim Policy “with a commitment to: (1) eliminating, preventing, and addressing the effects of Prohibited Conduct; (2) fostering an environment where all individuals are well-informed and supported in reporting Prohibited Conduct; [and] (3) providing a fair and impartial process for all parties;”<sup>14</sup> now, therefore, be it Resolved, that the Senate Assembly urges the University to

1. Rescind the Interim Policy and replace it with a policy complying with due process and strengthening the fact-finding mission of the University;
2. Prevent an individual reported to have committed Prohibited Conduct from directly questioning an individual reported to have experienced Prohibited Conduct;
3. Adopt a policy that includes cross-examination by a representative;
4. View cross-examination of witnesses as serving the goal of reaching legitimate and fair decisions;
5. Protect alleged victims from further harm or harassment, as might be caused by cross-examination by the accused;
6. Create a forum where cross-examination of accused and accuser may be conducted by a representative trained in the appropriate scope and manner of cross-examination;
7. Recognize that fear of having to confront, and discuss in detail, a sexual assault with the very individual accused of having committed the assault may well lead alleged victims not to report cases in the first instance; and
8. Commit to eliminating, preventing, and addressing the effects of sexual and gender-based misconduct; to fostering an environment where all individuals are supported and well-informed; and to providing a fair and impartial process for all parties.

**University of Michigan Bylaws of the Board of Regents, Sec. 4.01:**

*The University Senate*

The 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.

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**University of Michigan Bylaws of the Board of Regents, Sec. 4.04:**

*The Senate Assembly*

The Senate Assembly shall serve as the legislative arm of the senate.

The assembly shall have power to consider and advice regarding all matters within the jurisdiction of the University Senate which affect the functioning of the university as an institution of higher learning, which concern its obligations to the state and to the community at large, and which relate to its internal organization insofar as such matters of internal organization involve general questions of educational policy.

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**Rules of the University Senate, the Senate Assembly and the Senate Advisory Committee on**

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

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<sup>13</sup> Appellee’s Pet. For Reh’g and Reh’g En Banc at 6, Doe v. Baum , No. 17-2213 (6th Cir. Sept. 24, 2018))

<sup>14</sup> University of Michigan, Umbrella Policy (October 4, 2019), § I (pg. 1)