

Draft Notes of 18 November 2019

THE UNIVERSITY OF MICHIGAN  
UNIVERSITY SENATE MEETING  
JOINT SENATE AND SENATE ASSEMBLY MEETING  
17 November, 2019  
Monday, 3:15  
Honigman Auditorium  
Hutchins Hall

3:24: Call to Order

3:20: Approval of Agenda, Minutes, Announcements

There was no Quorum

3:25 Faculty senate measure on e-voting

Chair Beatty said that the point of the resolution was to allow the Senate Assembly to authorize the deliberative rules to make e-voting safe for the Faculty Senate experiment, and that the audio taping the Senate Assembly Meeting in October was an experiment.

Professor Marsh said that it is important to update the rules of the Faculty Senate to encourage broader participation of the faculty.

A Senate member asked what “present” meant, and whether this could include presence via an internet connection. Chair Beatty said this issue would be considered.

3:30 Guests C. Gerdes, Associate General Counsel and Special Counsel to the Provost; J. Burkel, Assistant Vice Provost for Academic and Faculty Affairs; S. Matish Associate Vice Provost for Academic and Faculty Affairs, P. Petrowski Associate Vice President and Deputy General Counsel

Chair Beatty invited members of the Senate to ask questions of the guests after they made their presentation on the Draft Umbrella Policy on Sexual Misconduct.

Associate Vice Provost Matish said that an outside review of the University’s Sexual Misconduct policies by Hogan Marren Babbo & Rose, Ltd recommended that the university adopt a single sexual misconduct policy for students and employees. The review was conducted and the firm recommended that the University issue a single umbrella policy that addresses sexual misconduct, and revise the procedures as they are applicable to students faculty and staff. President Schlissel appointed a task team to implement these recommendations, consisting of representatives from Office of General Counsel, the Provost’s Office, the Office for Institutional Equity (OIE), the Office for Student Conflict Resolution (OSCR), the Sexual Assault Prevention and Awareness Center (SAPAC), University Human Resources, Michigan Medicine, UM-Dearborn, and UM-Flint. The draft policy was released October 15, 2019 for community feedback. The period for providing feedback ends on November 22, 2019. The policy largely codifies and clarifies what is already in place.

Assistant Vice Provost Burkel said members of the team are visiting more than 60 groups, and to an anonymous survey. He reiterated the fact that these are all draft documents. There are 9



forms of prohibited conduct: Sexual Assault; Sexual Exploitation; Sexual Harassment; Gender-Based Harassment; Sexual and/or Gender-Based Stalking; Intimate Partner Violence; Sex and Gender-Based Discrimination; Retaliation; and Violation of Protective Measures. In a case where where alleged conduct may fall under both the draft umbrella and other policies (e.g., single incident involving allegations of race discrimination and sexual harassment), the university will determine whether the case should proceed under multiple procedures, or under one set of procedures. He said that Responsible Employees are employees who are required to promptly share all details of alleged Prohibited Conduct received in the scope of their employment with OIE. These Responsible Employees are (1) university administrators and supervisors; and (2) employees in certain designated positions and units or departments. The draft policy also lists confidential resources

Associate General Counsel and Special Counsel Gerdes said that the Umbrella Policy does not contain much that is new. She noted that people have complained about lack of transparency in OIE processes. One of the key improvements is a single document explaining the process. The groups determined that there should be separate procedures for students and employees (faculty and staff). The Umbrella policy will continue current investigative practice, no appeal, but faculty and staff can file a grievance against any sanction that is imposed. One key change is the identification by name all witnesses, parties and witnesses may request interim measure. OIE may approve interim measures in consultation with other University offices which HR will implement. The aspirational time line for the completion of an OIE investigation for faculty and staff is 115 days from commencement to sanctions.

Deputy General Counsel Petrowski said that University of Michigan Ann Arbor, University of Michigan-Dearborn and University of Michigan-Flint all rolled out new interim student policies in light of the US 6<sup>th</sup> Circuit Court finding in *Doe v. Baum*,<sup>1</sup> holding that where credibility is at issue in student sexual misconduct cases, and where suspension or expulsion is a likely sanction, a university must provide the parties a live hearing with the opportunity for cross-examination. The cross-examination must be conducted by the parties themselves or by their agents (it cannot be done by a third-party intermediary such as the hearing officer). The new procedure will be the same as is in the interim policy. The Student Procedures will continue to offer students two options for resolving matters: Investigative Resolution and Adaptable Resolution.

Members of the Senate raised drew attention to:

- the differential treatment of research faculty and staff, who can be suspended without pay at the outset of an investigation, and tenure-track faculty who are not subject to suspension without pay during an investigation
- The lack of an appeal against findings by the Office of Institutional Equity.
- That students have stronger protections than faculty and staff
- The failure to specify how the policy covers people who are both students and employees.
- The need to reform OIE practices in general.

4:43: The Senate Portion of the meeting was adjourned

4:43: Senate Assembly meeting

There was no quorum for this meeting

Professor Belmont introduced the motion from Committee on Civil Rights and Liberties (CCRL). The motion is to:

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<sup>1</sup> (<http://www.opn.ca6.uscourts.gov/opinions.pdf/18a0200p-06.pdf> )



1. Revise the Umbrella Policy to comply with due process and protect victims of sexual and gender-based misconduct;
2. Prevent a Respondent from directly questioning a Complainant;
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 the Complainant from further harm or harassment, as might be caused by cross-examination by the Respondent;
6. Create a forum where cross-examination of the Respondent and the Complainant 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 and/or gender-based misconduct with the very individual accused of having committed the misconduct may well lead alleged victims not to report cases in the first instance; and
8. Commit to eliminating, preventing, and addressing sexual and gender-based misconduct; foster an environment where all are informed and supported well; and provide a process with fairness for all.

There was strong support for this motion amongst those in attendance.

4:50 Matters Arising

5:00 Adjournment

**Next Senate Assembly Meeting – December 16, 2019**

Respectfully submitted

David Potter  
Senate Secretary

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**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 advise 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.