

THE UNIVERSITY OF MICHIGAN
SENATE ASSEMBLY MEETING
Monday, 16 November, 2020 3:00
The meeting was held by zoom

Present: Abir, Ahbel-Rappe (by virtue), Ali, Barzilai, Burzo, Byon, Castilho, Conway (by virtue), Dal Cin, DiFeo, Dinov, Dolins, Evrard, Fabiilli, Finlayson (by virtue), Fontana, Friese, Gallo (by virtue), Gnedin, Hertz, Huang, Hughes, Hyde, Kahn, Kazerooni, Ketefian, Knoblauch, Kolmanovsky, Lagisetty, Lahiri, Laurence, Liu, MacLatchy, Madathilparambil, Maitra, Manera (by virtue), Mansfield, , Maxim, Mesa, Modrak, Pal, Papaleontiou, Partridge, Pinto, Ramaswamy, Sales, Singer, Snyder, Spencer (by virtue), Subramanian, Toyama (by virtue), Van Berkel, Wang, Wright

Alternate Requested: None

Alternates Present: None

Absent: Andrias, Bawardi, Bridwell-Rabb, Butt, Byon, Caulfield, Conjeevaram, Garner, Guzdial, Jenkins, Junghans, Kattari, Kessentini, Lampe, Lepri, Liang, Mendlow, Morgan, Nelson, Okwudire, Ostling, Passey, Trumpey

3:17: Call to order/ Welcome/Announcements/Approval of Agenda/Minutes of 9/21 and 10/26

Chair Conway called the meeting to order. The minutes for September 21 were approved.

3:20: Faculty Senate Office Updates –Open Mic, Electronic Meetings and Accessibility Task Force

Dr. Banasik said that there have been three Open Mic sessions so far, and encouraged Senate Assembly members to take these opportunities to reach out to SACUA members. She said that the Electronic Meetings and Accessibility Task Force is meeting and is on track to have recommendations for the January meeting. The Task Force is looking to develop procedures so that the meetings can be handled in as accessible a way as possible.

3:25: SACUA Updates –COVID-19 Council, Response to Motions Meeting, LEO

Chair Conway asked Professor Hyde to discuss the meetings of the COVID-19 group with President Schlissel on October 27 and November 6.

Professor Hyde said the group consists of 16 faculty members, most of whom have some experience relevant to managing the COVID-19 Pandemic, and the that President and Provost wanted to get a sense of what faculty members were thinking. The meeting on October 27 focused on planning for Winter Term, 2021. It was clear at that point that the administration's plan corresponded with desires of faculty. In the meeting on November 6, the group again discussed the plan for the Winter Term, 2021. Professor Hyde said that he happy is pass feedback from faculty members along to the President and Provost, who, he said, are genuinely open to faculty input. He noted the correspondence between issues raised by the COVID-19 Council and issues addressed in the University's weekly COVID-19 briefings as an indication that the council is bringing up real issues. He distinguished the role of the COVID-19 Council from that of Senate

Assembly and SACUA, saying that the Council provides a forum for people to discuss issues that they are dealing with, while SACUA and Senate Assembly are the bodies to push for policy changes.

Professor Manera said President Schlissel had met with a group consisting of the faculty members who had sponsored motions at the September 16, 2020 Faculty Senate meeting together with SACUA, and that he is trying to engage in two-way communication with faculty with respect to the Winter Term plan. She said President Schlissel also looks forward to the work of the Senate Assembly Committee examining the University's response to the WilmerHale report, and that the Regents are in the last stage of selecting consultants who will also be examining the response to the report. She said President Schlissel wants the Senate Assembly committee to work with the consultants.

Chair Conway said that she is setting up regular meetings with the Lecturers' Employee Organization (LEO); and that she and Professor Manera are meeting with Central Student Government (CSG) officers. They encouraged CSG to bring forth motions through the Student Relations Advisory Committee (SRAC) concerning grading for the Fall Term, and Winter Term study days; SRAC endorsed both proposals and sent them to Vice President Harmon. The Administration has reacted favorably to both proposals which are now going into effect.

Chair Conway said that, on December 1, the Faculty Senate Office will distribute suggestions to Senate Assembly about ways they can discuss Faculty Senate issues with their units. Professor Dal Cin, noted that as faculty meetings in the College of Literature, Science and the Arts (LSA) are not well attended, that departmental meetings are the right place to have these discussions, and, since many departments have no Senate Assembly representatives, a mechanism needs to be developed to allow for communication between Senate Assembly and those departments in which there are no Senate Assembly members. Professor Ketefian said she prepared a written summary of Senate Assembly business for monthly faculty meetings in the School of Nursing, and that she would request a few minutes on the agenda to discuss pressing topics. She noted the importance of having a mechanism to bring important issues from within a unit to the broader university community. Chair Conway said she has spoken with the Academic Programs Group (APG), asking for time at unit meetings for discussion of Faculty Senate business. Members of the APG said that they are happy to provide this time.

3:40: Preparation for OIE and Title IX (breakout groups)

4:00: Office of Institutional Equity: President Schlissel and Tami Strickman, Associate Vice President of Institutional Equity; Patricia Petrowski, Associate Vice President and Deputy General Counsel

President Schlissel greeted members of the Assembly, saying he was joining the meeting to discuss the improvement the University's sexual misconduct policies in response to the conduct of former-Provost Philbert, noting that both the behavior and the length of time it took for it to come to the surface were unacceptable. He said that the Board of Regents has required the retention of an outside firm to work with faculty and faculty governance to make sure that the University has policies in place that are jointly owned by the faculty and the administration. He stressed that people must feel they can report misconduct without fear of intimidation or retaliation, are confident that all reports will be taken seriously, and that there will be consequences regardless of who violates our rules and standards. He said that the administration will work closely with the WilmerHale Task Force chaired by Professor Potter.

President Schlissel said policies and practices of the Office for Institutional Equity (OIE), which is charged with investigating sexual harassment, and play a central role in keeping the community safe, have been criticized over the years. He said that a proper investigation of former-Provost Philbert in 2005 would have prevented substantial harm to members of the University community.

President Schlissel introduced Associate Vice President Strickman, the new director of OIE, who has come to the University from the University of Nebraska, Lincoln. Prior to her work as Title IX coordinator for the University of Nebraska, she served as an Assistant State's Attorney in Cook County for 14 years. Associate Vice President Strickman discussed changes that have been made in at OIE in the past year. These include increased staffing with the result that there are now nine investigator positions, organized into three

groups of three, each reporting to an associate OIE director. The investigators work with the Associate Director throughout the investigation, updating parties every 30 days, opening a two-way street for communication with both parties, and keeping all stake holders up to date with the investigation. In addition, she said, people could reach out to her directly. She said OIE is looking to have a comprehensive grievance management system to help track and document cases as they come in, and is working to engage the campus community to get feedback on its processes.

Associate Vice President Strickman said OIE is still employing the “Single Investigator” model to investigate matters involving sexual misconduct that fall outside of a narrow definition under Title IX. She noted that the umbrella policy drafting team reviewed information from the campus community about the effectiveness of this model in the Fall of 2019 and found that the “Single Investigator” model encouraged reporting because people were discouraged from reporting if they felt they would be subject to a formal hearing. She added that OIE wished for its processes to track institutional procedures rather than legal processes, and that in cases involving discrimination and harassment the University used the “Single Investigator” model. She noted that a process that involved a formal hearing could prolong processes. She said only three other Big Ten institutions held investigative hearings in non-Title IX cases.

Associate Vice President Strickman said OIE is continuing to explore an appeal process, but is concerned that appeals could add significant time to the process, as the opportunity to appeal would have to be provided to both sides. Under the current system, a person who is not satisfied with the sanction imposed can file a grievance against the sanction. She said that discussion of the issue is ongoing in the face of continuing policy change at the national level.

Professor Modrak said the “Single Investigator” model did not allow for a thorough investigation and that a hearing was not the only other option, noting that an investigation could be carried out by a committee or by multiple investigators to ensure that the situation was examined from different perspectives. She noted that the “Single Investigator” model had failed in the case of former-Provost Philbert.

President Schlissel said there was greatly heightened sensitivity on the part of the administration to the issue of information in the community that does not rise to the level of an investigation, and that the personnel records of internal candidates who are finalists for positions are being routinely examined. He noted that when former-Provost Philbert’s conduct came to light, he was removed immediately from his position. He hoped that this would increase confidence in the system.

Professor Ahbel-Rappe asked which Big Ten institutions did not use the “Single Investigator” model. Associate Vice President Strickman said that Michigan State and the University of Minnesota used a hearing process and that Purdue used a committee of two investigators followed by a hearing before an equity committee consisting of an administrator and three members of faculty/staff. Professor Ahbel-Rappe asked if these processes seemed fairer. Associate Vice President Strickman replied that the period during which the interim policy is in place is a good time to discuss different processes, noting that the presumption with the “Single Investigator” model is that the investigator is very well trained. Professor Ahbel-Rappe noted that this model has recently failed at the University. President Schlissel said he did not doubt that the University should look at different models in seeking to find an approach that has the right balance, that the aim of a policy should be to enable cases to come forward and be adjudicated fairly.

Professor Manera noted that SACUA has been asserting for several years that the “Single Investigator” is insufficient. Chair Conway asked if Associate Vice President Strickman could explain what is meant by the “Single Investigator” model.

Associate Vice President Strickman said that when a report comes to OIE, an investigator, who often works closely with an Associate Director, is assigned to gather all the information so as to issue the preliminary report, at times after a great deal of discussion within the OIE team. The report is reviewed by both parties, then a final report presents the facts and applies the facts to the policy. The investigator does not apply a sanction.

Professor Toyama asked about the factors that explain the retention of the “Single Investigator” model and resistance to an appeal process, especially given the fact that the grievance process, which is not binding upon the administration, does not provide adequate protection.

Associate Vice President Strickman said OIE is concerned about the length of time connected with the OIE investigative process, that OIE has heard the process takes too long, and that the addition of an appeal process, for both parties, would extend the process further, hence the feeling that the use of the grievance process is more prudent.

Associate Vice President Petrowski said University policy is in a state of flux with reference to Title IX regulations, that the Obama administration sanctioned the use of a “Single Investigator” model in 2011, and discouraged hearings, that guidance was rescinded by the Trump administration, which issued a proposed rule that went into effect on May 6, requesting new processes by August. President-Elect Biden has said that his administration will return to the guidance offered in the 2011 “Dear Colleague” letter and do away with the new regulations. The team developing the University’s new sexual misconduct policy has been aware that the changes might not stick—that the University might be required to do something much different from what it is currently doing.

Professor Finlayson said that the constant discussion of the “Single Investigator” model suggests it needs to be reimaged. Professor Mesa said it appeared that the teams of three investigators might streamline the process, enabling responsibilities in preparing the report to be shared. Professor Sales said that in his breakout group, faculty had commented that the current policy seems very legalistic, and raised the issue of whether a model based on restorative justice might be more effective.

4:30: Interim Umbrella Policy: Tami Strickman, Elizabeth Seney, Title IX Coordinator; Christine Gerdes, Special Counsel to the Provost; Jim Burkel, Assistant Vice Provost for Academic and Faculty Affairs; Patty Petrowski, Associate Vice President and Deputy General Counsel

Title IX Coordinator Elizabeth Seney presented [this power point presentation](#).

At the conclusion of the presentation, Professor Dal Cin asked why OIE now reports to the Chief Financial Officer (CFO).

Title IX Coordinator Seney said that this was to alleviate concerns about a conflict of interest that had arisen in connection with former-Provost Philbert.

Professor Toyama asked if protections from retaliation apply to those reporting as well as to victims, and if there was a bar that prevented retaliation.

Title IX Coordinator Seney said that anyone is protected from retaliation who makes a report, as are all witnesses in a process, the respondent is also protected from retaliation (corrective action is not retaliation). When there is an allegation of retaliation, her office seeks to discover an appropriate process, asking what the complainant wants to have happen. The office is also concerned about situations in which there has not been an allegation of retaliation, but a party is afraid that retaliation could occur.

Chair Conway asked if March 15 is the last day for feedback on the interim policy.

Title IX Coordinator Seney said that is correct.

Chair Conway said that Senate Assembly will want to talk with Title IX Coordinator Seney again, and expressed appreciation for their presence at the meeting. She said that a google doc containing comments from the breakout rooms and the chat would be sent to President Schlissel.

5:03 Adjournment

Respectfully submitted

David Potter
Senate Secretary

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.

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.

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.