

Minutes of 4 November 2013 SACUA
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THE UNIVERSITY OF MICHIGAN
Senate Advisory Committee on University Affairs (SACUA)
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Present: Holland, Koopmann, Masten, Mondro, Oey, Olsen, Staller (chair), Ziff; Lehman; Schneider, Snyder

Absent: Larsen

Guests: A. Walesby (Office of Institutional Equity), J. Frumkin (Academic Human Resources), R. Fraser, *Daily* reporter, *Record* reporter.

MATERIALS DISTRIBUTED

1. Draft agenda.
2. Draft minutes of 30 September 2013 SACUA.
3. Draft minutes of 28 October 2013 SACUA.
4. <http://hr.umich.edu/oie/index.html>, <http://hr.umich.edu/oie/mission.html>,
<http://hr.umich.edu/oie/office.html>, <http://hr.umich.edu/oie/ndpolicy.html>,
<http://hr.umich.edu/oie/complaint.html>, <http://hr.umich.edu/oie/Complainant2013.pdf>,
<http://hr.umich.edu/oie/Respondent2013.pdf>,
<http://hr.umich.edu/oie/discrimination/harassresol.html>
5. Draft Senate Assembly agenda.
6. Draft Key Changes in Model Grievance, dated 4 October 2013.
7. Electronic mail message from S-M Weineck to UM executive officers dated 1 November 2013 regarding Urgent Questions and Concerns Regarding AST
8. Draft resolution regarding benefits dated 4 November 2013.

Chair Staller convened the meeting at 3:16. The proposed agenda was approved.

CONSIDERATION OF MINUTES

The draft minutes of 30 September 2013 were approved.

The draft minutes of 28 October 2013 were corrected and approved.

Announcements-

1. Professor Masten and the chair met with the provost on Friday. Topics of discussion were (1) the provost's new engaged learning initiative, for which she is seeking broad faculty participation in task teams, and (2) administrative shared services (AST project), for which the provost acknowledged a need for faculty involvement.

2. LSA chairs and directors have expressed concern about AST (distributed item 7).
3. Fitness for duty policy is still evolving and a revised draft policy document will soon be transmitted to SACUA from the provost's office.

VISIT OF A. WALESBY AND J. FRUMKIN

The guests joined the meeting at 3:28 P.M. Chair Staller asked the guests to describe the current status of grievance policy and the policy of the Office of Institutional Equity (OIE). J. Frumkin reviewed the rollout of the new grievance policy. He said it took longer than it should have. Some schools adopted it quickly, but others took longer. It is now complete. Some schools adopted the model policy with no changes, and some adopted variants of the model policy that ranged from minimal to robust. Election of faculty for grievance panels is not yet complete. Both the medical school and the School of Public Health have stipulated an ad hoc process for naming external members, but that will not work. Academic Human Resources (AHR) will follow up. A continuing problem involves simultaneous scheduling for 3 grievance hearing board (GHB) members, grievant and respondent. There appears to be no easy solution to the difficulty. AHR provides logistics and advice from a process standpoint, but is not involved in decision making. Sometimes AHR cooperates with OIE regarding interviews. Anyone involved with the OIE process is recused from GHB activity.

Mr. Walesby said that the OIE conducts investigative work under authority of Standard Practice Guide (SPG) guidelines regarding sexual harassment and non discrimination. He said that the OIE is a neutral body. When a complainant comes forward, they first talk with the complainant and write a draft statement. They then ask the complainant to review the draft for accuracy and completeness. They also evaluate the need for intermediate steps such as separating the parties.

Next, Mr. Walesby said, OIE personnel contact the accused and ask them to meet. He said the OIE shares minimal information prior to meeting. At the meeting, they share an information sheet with the accused (distributed item 4) and ask them to sign a statement acknowledging that they understand it. He said the accused do not get to read the complainant statement, but rather are asked questions crafted by OIE based on the complaint. Following that interview the OIE prepares a draft statement from the respondent. Subsequently, the OIE shares documentation with both parties and gives them five days to respond to a draft report that contains no finding. After that, the OIE issues its report with findings to the unit dean. He said the standard invoked in the finding is "preponderance of the evidence," not "clear and convincing evidence," and not "beyond reasonable doubt."

Mr. Walesby said that neither the complainant nor the respondent get to see a draft finding or to respond to it. He said that there is no opportunity to review or appeal the OIE findings, and that the accused are not permitted to face or cross-examine their accusers. He said "We feel it is inappropriate (to permit cross-examination) and we get guidance from the federal government."

Mr. Walesby said that OIE handles 70 to 100 cases per year involving faculty and staff, and an additional 60 to 70 cases of student sexual assault. He said the deans accept 100% of the OIE findings.

Professor Masten asked how Mr. Walesby could know that OIE didn't get some of its findings wrong. He noted that it is virtually impossible that they are all correct. He asked for the justification for not allowing an appeal. Mr. Walesby replied that OIE “run(s) things by legal counsel”. He said he did not know what the justification is, and that it was that way when he got here.

Mr. Frumkin pointed out that grievance procedures exist to handle negative personnel decisions. He said the grievance procedure intersects with OIE when there has been a finding and a dean has taken action. He said faculty members have disagreed with both the findings and with the sanctions. He said the former cases are more complicated situations because grievants must argue that there was a process failure at the OIE. Chair Staller expressed concern that OIE findings cannot be the subject of a grievance. Professor Koopmann asked if that limitation was an internal decision. If so, he said, it is woefully unfair and takes away rights from people.

Mr. Frumkin said he did not know who made the decision to deny appeal of OIE findings. He said he would get back to SACUA with who made the decision and how it was made.

Dr. Fraser asked how the OIE reviews reduction in force (RIF) actions for antidiscrimination. Mr. Walesby replied that he had no experience with that matter. Dr. Fraser asked if specific age matters in cases of age discrimination, or if all individuals older than 40 years are grouped together. Mr. Walesby replied that when he worked for the federal government the practice was to band the age groups.

Mr. Walesby said that the OIE issues findings of violation of university policy in 6 to 8 percent of its cases. In the majority of cases they find no violation of university policy, but they may recommend training or outreach. Professor Oey asked whether Walesby thought that people simply had misperceptions in more than 90% of the cases. Mr. Walesby replied that complainants felt strongly, but that there was insufficient evidence in most cases. He said that the adoption of a “preponderance of the evidence” standard over “clear and convincing evidence” in cases of student sexual assault is a response to guidance from the federal government and the courts, and that it has to affect finding outcomes.

Mr. Frumkin stated that sometimes faculty members are not aware of the impact of what they are saying or doing, and that training programs can help sensitize people to unintentional hurt feelings. Professor Koopmann responded that there is a clash between mediocrity and perfectionism that can be offensive to some people. He said he disagreed with any claim that one person’s perception is reality. Mr. Walesby replied that OIE looks at whether discrimination was involved, and is not concerned with offensiveness per se. Mr. Frumkin said that in the case of lecture topics that cause discomfort to some students, the question is whether they are pertinent to the pedagogy of the course.

Chair Staller pointed out that some unit grievance policies have drifted far from the model policy negotiated between the central administration and faculty governance. Mr. Frumkin replied that policy was not his jurisdiction and that policy matters should be referred to the provost’s office.

The guests left the meeting at 4:33 P.M.

NOVEMBER SENATE ASSEMBLY AGENDA

Chair Staller called attention to distributed item 5. SACUA discussed options for the Senate Assembly meeting agenda and approved a final draft agenda featuring (1) IT rationalization, (2) electronic teaching evaluations, and (3) benefits by unanimous vote.

EXECUTIVE SESSION

The meeting entered executive session at 4:40 P.M. Topics included (1) discussions of benefits with the provost and possible actions by faculty governance, (2) the status of a CESF report to the Board of Regents, and (3) a committee chair nomination. The meeting resumed open session at 5:08 P.M.

The resolution proposed at the 28 October 2013 meeting by Professor Koopmann was taken up for consideration. Professor Koopmann withdrew his motion and no further action was taken.

The meeting was adjourned at 5:08 P.M.

Respectfully submitted,

John T. Lehman
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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