

Minutes 14 January 2019
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THE UNIVERSITY OF MICHIGAN
Senate Advisory Committee on University Affairs (SACUA)
Monday, January 14, 2019 3:15 pm
4006 Fleming Administration Building
Ann Arbor, Michigan 48109-1340

Present: Atzmon, Beatty, Conway, Lippert, Marsh (chair), Schultz, Spencer, Potter, Schneider, Snyder

Absent: Carlos, Malek

Guests: Members of the Press

3:17: Call to Order/ Agenda Approval

The agenda was approved.

The minutes for December 3, 2018 and January 7, 2019 were approved

3:20: Announcements

Chair Marsh and Professor Beatty have been seeking to identify former SACUA and Senate Assembly members who will urge colleagues to participate in faculty governance. The spreadsheet listing these faculty members has been assembled and will be circulated to SACUA for checking. Librarian Spencer said that Information Technology Committee has been examining methods for electronic voting which could enhance participation.

3:30: Tri-Campus Committee Resolution on Governance

Professor Lippert reviewed the revised text of the Tri-Campus Committee Resolution on Governance (see appendix 1 for the revised text for submission to Senate Assembly). The motion to submit the resolution to the Senate Assembly at its January 28, 2019 meeting with SACUA's endorsement passed unanimously.

3:45 Tri-Campus Principles of Due Process

Professor Lippert reviewed the Statement on Principals of Due Process (see appendix 2 for the revised text for submission to Senate Assembly). The motion to submit the resolution to the Senate Assembly at its January 28, 2019 meeting with SACUA's endorsement passed unanimously.

3:47 SACUA Nominating Committee Election

According to Regents Bylaws the committee consists of outgoing SACUA members along with four faculty members whose terms are ending. Mr. Schneider said there have been issues in getting the Senate Assembly members to participate; he suggested that Senate Assembly members to opt out if they are not interested and that SACUA members seek out potential candidates for SACUA. At its January meeting, the Senate Assembly will vote for the membership of the committee.

4:00 January 28, 2019 Senate Assembly Meeting

The agenda will include:

1. Vote on the Tri-Campus Resolution on Governance
2. Vote on the Statement on Principals of Due Process
3. The election of the SACUA nominating committee
4. Discussion of the SACUA meeting with the Blue-Ribbon Panel.

Professors Beatty and Schultz noted there has been student discontent with the work of the Blue-Ribbon Committee as students feel that the committee is looking for specific responses. Professor Atzmon drew attention to the account of the meeting between the Blue-Ribbon Panel and students on the Ann Arbor campus that had appeared in the *Michigan Daily* (<https://www.michigandaily.com/section/academics/student-group-direct-action-palestine-takes-over-blue-ribbon-panel>).

Chair Marsh said he would like to have the Senate Assembly to take up the issue of electronic voting, suggesting that the Assembly be asked to use its authority under the Regents' Bylaws to speak on behalf of the Senate. He will consult with the Rules Committee about the prospective rules change.

Professor Beatty asked if a guest should be invited. Professor Potter suggested inviting Kevin Hegarty, Executive Vice President and Chief Financial Officer, Professor Conway suggested inviting Vice President for Information Technology and Chief Information Officer Ravi Pendse. Chair Marsh will extend invitations to Vice Presidents Hegarty and Pendse.

4:20 Grievance Procedures Update

Librarian Spencer discussed the "Recommended Revisions and Additions to the Model Grievance Procedure," which she has prepared (see appendix 2). She, and Professor Beatty will circulate the document to the Faculty Grievance Monitors. Professor Beatty reported that she had contacted the Big Ten Office to inquire about the training process for Grievance Review Boards at other Big Ten schools and was told that there was no training at other Big Ten schools. Professor Schultz said he did not think that the current training offered to members of Grievance Hearing Boards by Academic Human Resources is sufficient and Professor Lippert said training should include discussion of the ways general policies apply to individual cases. Chair Marsh said the fact that the SACUA chair is notified when a grievance is filed offered a way to develop a mechanism for sending guidelines to members of Grievance Hearing Boards. Professor Schultz stressed the importance of consulting with Professor Staller.

4:30 Library Council

Professor Conway reported on the meetings of the committee, saying that conversation had so far been devoted to the use of space in the library and the development of digital scholarship. Chair Marsh said that the committee has not been making its annual reports to SACUA and the Senate Assembly as mandated by Bylaw 12.0.1.1.

4:31 Executive Session

[5.09 hearing]

5:00 Adjournment

Appendix 1: Tricampus resolution on Governance

Resolution on Governance at all Levels: Endorsed by SACUA January 14, 2019 Introduction:

This resolution addresses governance challenges caused by differences in terminology for academic bodies among the 3 campuses. For example, units named colleges, departments, programs, units, institutes, divisions, and disciplines are all involved in making curricular policies and decisions that must be subject to faculty purview according to the Regent's Bylaws and to common understandings of faculty governance. There seems to be confusion about the faculty's authority and role in governance within those alternatively named decision-making bodies. The resolution is a reminder of the existing policy that regardless of how the decision-making body has been named, decision-making should include consultation of the faculty with relevant disciplinary expertise and that those faculty may establish operating procedures within the bodies in which they serve. For example, departments should be free to pass internal rules without obstruction, understanding that if

a conflict arises between policies, the policy of the higher body prevails (per the SPG: <http://spg.umich.edu/about/policy-hierarchy>).

Rationale:

This resolution reaffirms the importance of existing policy that already applies across the three campuses. Passages below are taken from those existing institution-wide policies.

See:

- Chapter 4 of the University of Michigan Faculty Handbook: <http://provost.umich.edu/faculty/handbook/4/index.html>
- The 2008 Principles of Faculty Involvement in Institutional and Academic Unit Governance at the University of Michigan, developed and endorsed by the University Shared Governance Task Force of the Senate Assembly and Provost Teresa A. Sullivan; <http://facultysenate.umich.edu/wp-content/uploads/sites/22/2015/02/Faculty-Senate-Principles-and-Regent-bylaws-updated-.pdf>
- The Regents Bylaws, sections 5.01-09, addressing governing bodies and the power and duties of governing faculties; <http://regents.umich.edu/bylaws/bylaws05a.html>
- The University of Michigan SPG outlining the hierarchy of legal and policy requirements: <http://spg.umich.edu/about/policy-hierarchy>.

Resolution on Governance at all Levels:

Whereas the principles of faculty governance apply to all three campuses across the University of Michigan as an institution;

Whereas the Principles for Faculty Participation in Institutional Governance state that “Faculty members are encouraged to use these principles as a basis for ensuring their effective participation in governance at all levels; [...] Agencies for faculty participation in the government of the college/school or university shall be established at each level where faculty responsibility is to be met. A faculty-elected campus-wide body shall exist for the presentation of the views of the whole faculty. The agencies may consist of meetings of all faculty members of a department, school, college, division, or university system, or they may take the form of faculty-elected executive committees in departments and colleges/schools, and a faculty-elected body for larger divisions or for the institution as a whole (Part A.5).”

Whereas faculty serve in a variety of roles, including through governance within committees, programs, departments, schools, colleges, institutes, divisions, and assemblies;

Whereas the governance structures of the institution vary in number and type by campus;

Whereas an instructional unit is most often a school or college, all Regentally established academic structures (i.e., disciplines, institutes, programs, departments, etc.) also function as types of units and are meant to be subject to the same principles of faculty governance;

Be it resolved that the U of M Senate Assembly acknowledges the importance of faculty participation in institutional shared governance at every level of academic responsibility on all U of M campuses. This includes the faculty at the departmental and academic program or Discipline (Dearborn) levels. Faculty have the right and duty to develop and ratify internal procedures in accordance with the SPG ‘Hierarchy of Legal and Policy Requirements,’ and to establish mechanisms for their participation at those levels. Those best informed by disciplinary academic expertise should be able to make decisions according to the standards of governance established in the Regents Bylaws and Principles of Governance.

Appendix 2: Statement on Principals of Due Process

Rationale: In light of recent and continuing challenges to faculty rights and academic freedom, the Senate Assembly endorses the following summary and compendium of what we see as long established norms of university governance.

Summary: Principles of due process are an essential component of a transparent and democratic system of shared governance in higher education. It is the expectation of the University of Michigan Senate Assembly that the principles outlined in sections A-E of this document should be applied in all circumstances involving the evaluation of a faculty member's conduct, regardless of the specific procedures, offices, or persons involved. These principles apply to all faculty members on all University of Michigan campuses and to any type of investigation of faculty conduct where sanctions are being considered. Supervisors and others overseeing members of the governing faculty are advised to maintain open dialog with those faculty regarding their professional responsibilities, allowing for low-risk feedback, mentorship, and opportunities to alter conduct before sanctions become possible or complaints arise. Where principles in sections A-E are not currently being met, faculty bodies, committees, groups, and their supervisors, as well as relevant staff offices, should work toward meeting these principles and establishing appropriate procedures before they are needed (normally such procedures should be approved by the relevant faculty legislative bodies where they will be applied).¹ All investigations of faculty conduct should adhere to "due process and procedural fairness, including but not limited to, fair and adequate notice, fair investigation processes, and the ability to obtain an independent, meaningful and timely appeal of findings."² In response to (and in part derived from) the 2015 Report on the Office of Institutional Equity Procedures and Conduct written by SACUA, sections A-E of this document are endorsed as rights of due process for investigation of a faculty member's conduct.

A) Principles of fair investigation:

1. Investigation of faculty conduct, including by supervisors, administrators, and staff offices, should occur through pre-articulated procedures that have been endorsed by the relevant governing faculty body and distributed to the faculty for whom they apply (i.e. faculty in a department for a departmental process, those in a college/school for a school/college process, etc.).
2. Procedures should conform to these and other principles, such as the Standard Practice Guide (see the SPG Hierarchy of Legal and Policy Requirements),³ Regents Bylaws,⁴

¹ See the SPG 'Procedures for Development of University Policy,' <http://www.spg.umich.edu/policies/policy-development-procedures>, and appropriate bylaws, codes, and standing rules with jurisdiction

² SACUA, Report on Office of Institutional Equity Procedures and Conduct (2015), ii. See <https://facultysenate.umich.edu/wp-content/uploads/sites/22/2015/04/SACUA-OIE-Report-public-version-final-3-9-15.pdf>.

³ SPG, 'Hierarchy of Legal and Policy Requirements,' <http://spg.umich.edu/about/policy-hierarchy>.

⁴ Bylaws of the Board of Regents: <http://regents.umich.edu/bylaws/>.

University of Michigan Faculty Handbook,⁵ and Senate Assembly Rules.⁶ Another important source regarding standards of due process endorsed in these principles, including for sanctioning of faculty, is the AAUP Recommended Institutional Regulations on Academic Freedom and Tenure.⁷

3. Procedures should address expectations of confidentiality, discretion, and timeliness of proceedings, for the respondent, complainant, and investigatory body, as well as where/how documentation associated with the investigation will be kept and which parties will have access to it.
4. Investigation activities that might compromise a faculty member's professional standing should not occur before the faculty member has been apprised of the investigation.
5. Investigations should proceed only after a complainant submits a written complaint. Complaints should clearly identify actions in question and the policies that the complainant believes have been violated by those actions. If an administrative or staff office that might have a role in an investigation or determining sanctions alleges wrongdoing without an independent complaint then it should treat itself as a complainant and follow the procedures to act only in that role. In such instances, an appropriate third party approved by both the complainant and administrative/staff office will be selected to investigate the complaint.
6. Standards of due process include fair and adequate notice: "[D]ue process demands that college and university officials offer employees notice of alleged rule violations and, where possible, opportunities to correct their behavior."⁸
7. Faculty members are entitled to have an opportunity to be heard at a point in the process when there is still an opportunity to influence the outcome.⁹
8. A fair and competent investigation process includes:
 - Access to all opposing evidence and that which is reasonably necessary to support or defend oneself as well as the opportunity to respond to and challenge opposing facts. This includes the right to present evidence and witnesses in one's defense, as well as to question opposing witnesses directly.¹⁰
 - A right to representation by counsel and to have a support person present at any meetings.
9. A fair hearing conducted by knowledgeable and impartial arbiters: "Because of the nature of academic inquiry and its often specialized subject matter, fair treatment in cases involving the professional activities of faculty, in addition to conforming to other generally applicable principles, requires that assessments and conclusions be informed by

⁵ University of Michigan Faculty Handbook:
<https://www.provost.umich.edu/faculty/handbook/>.

⁶ Rules of the Senate Assembly: <https://facultysenate.umich.edu/wp-content/uploads/sites/22/2015/02/rules-april1997.pdf>.

⁷ For AAUP's Recommended Institutional Regulations on Academic Freedom and Tenure see https://www.aaup.org/sites/default/files/JA18_RIR.pdf.

⁸ Patrick D. Pauken, *Due Process Rights in Faculty and Staff Dismissal*, pp. 135-141, Charles J. Russo (ed.), *Encyclopedia of Law and Higher Education*, 2010 as cited in SACUA, Report, 4

⁹ *Ibid*, 3

¹⁰ H.J. Friendly, "Some Kind of Hearing", 123 U. Pa. L. Rev. 1267 (1975). Cited in SACUA, Report on Office of Institutional Equity Procedures and Conduct (2015), 4. Being able to directly question opposing witnesses is in keeping with SACUA's best practices for grievance procedures.

or subject to review by ‘the judgment of competent peers.’”¹¹ Investigatory procedures should avoid conflict of interest.

10. Time limits for resolutions of complaints should be indicated in all procedures relevant to assessing faculty conduct, as well as for appeals. Options for requesting extensions should also be outlined.
11. All involved in conducting an investigation should have appropriate training that is standard to the industry, which might include training in bias and discrimination.
12. Investigators should be identified prior to the investigation. Any changes to those conducting the investigation should thereafter be approved by the complainant and respondent.

B) Principles regarding sanctions:

1. Per SACUA’s recommendations in the 2015 OIE Report, “institutional discipline of faculty members [must be] in proportion to the severity and persistence of misconduct. . . .”¹² If findings of an investigation were inconclusive or did not find fault or recommend sanctions, no sanction should be applied by any party except through a formal appeal process or separate investigation that results in a different finding.
2. Sanctions should not be imposed against a faculty member who was not the subject of the investigation, or who made the investigated complaint (including witnesses), unless a separate complaint and investigation took place regarding his/her own conduct. Findings and sanctions against complainants or witnesses in the absence of separate complaints and investigations (afforded the complainant or witness in the role of a respondent) shall be considered retaliatory.
3. The variety of possible sanctions for a given level of investigation should be articulated by the relevant level of governing faculty before investigations take place. Sanctions should not infringe upon a faculty member’s rights to academic freedom and freedom of speech.
4. Sanctions and findings should be accompanied by a written explanation that specifically and fully identifies the actions found to be in violation of policy, the specific policies that those actions were found to have violated, and the factual basis for the decision. The explanation should also provide a complete record of evidence (including witness statements) under consideration.
5. Sanctions and findings should be based exclusively on the evidence presented. For example, committees and other investigators should not procure/consider evidence or consult witnesses that the faculty member does not have an opportunity to question.
6. All investigatory procedures, including those for investigations by OIE, Human Resources, boards, committees, and administrative offices or supervisors, etc. should include a right to timely and meaningful appeal heard by independent representatives who were not involved in the original investigation. Appeal procedures should be carefully articulated.
7. A written warning or finding against a faculty member is a form of sanction for LEO faculty per the LEO Contract. This should be considered the case for governing faculty as well.¹³

¹¹ University of Michigan Faculty Handbook, Section 1.C. as cited in the SACUA, Report.

¹² Ibid, 3.

¹³ For LEO, ‘Discipline is a written warning, suspension with or without pay, reduction in duties, or reduction in pay for misconduct or unsatisfactory performance.’ U of M LEO Contract (2013-18), 111, <https://leounion.org/contract>.

8. To be considered for sanction, including a written finding, a faculty member should have enjoyed all rights of a respondent in an investigatory process.
9. Investigators, grievance boards, etc. should confine findings and sanctions to those individuals and actions that constitute the original subject of the complaint. To avoid creating findings that extend beyond the evidence considered, it is not the purview of investigators to find fault with others, including the complainant, respondent, or witnesses, for actions that were not under review.
10. Per the AAUP's Statement on Government of Colleges and Universities, faculty status decisions should be by faculty action in both favorable and adverse reactions. An elected faculty body (not an executive committee due to possible conflicts of interest) should offer primary input on proposed sanctions.

C) Interpretation or modification of governance policy

In complaints requiring the interpretation or modification of governance policy (and for all governance disputes that affect faculty), faculty governance bodies should be among those consulted (if not the primary source consulted). Hence, Human Resources, OIE, the Office of General Counsel, administrators and their agents should consult faculty governance bodies that are responsible for the setting, maintaining, or enforcement of the policy in question, to settle interpretation questions between faculty, administrators, or staff, including those that could result in sanctioning of a faculty member.

D) In cases of dismissal or threat of dismissal

Members of the governing faculty should consult Section 5.09 of the Regents Bylaws,¹⁴ the Tenure Committee Hearing Procedures, and the Overview of the process in a Regents' Bylaws 5.09 hearing conducted under Section 5, which also establish due- process standards that may be suitable for other situations.¹⁵

Appendix 3: Recommended Revisions and Additions to the Model Grievance Procedure

SACUA and Senate Assembly periodically modify the Model Faculty Grievance Procedure. The current Model Grievance Procedure was approved in 2010 after a review and revision of the 2006 version of the policy. In 2015, SACUA reviewed the 2010 Model Grievance Procedures and produced a document entitled "Guidance on Grievability Under the University of Michigan 2010 Model Grievance Procedures". The 2015 document clarified ambiguous language of the 2010 policy and sought to provide greater transparency throughout the process, as well as increased accountability with the aim of reducing the likelihood of litigation. Each revision also has the aim of ensuring fairness for the grievant during what can be a stressful process. Following the precedent set in 2010 and 2015, in 2018-2019, we suggest the following recommendations as addenda to the current Model Grievance Procedure, once again with the view toward ensuring fairness to the grievant.

Preparing the Grievance

¹⁴ Regents' Bylaws Section 5.09: Procedures in Cases of Dismissal, Demotion, or Terminal Appointment (revised April 2011), <http://regents.umich.edu/bylaws/bylaws05a.html#9>.

¹⁵ Overview of the process in a Regents' Bylaws 5.09 hearing conducted under Section 5 (approved by SACUA, September 21, 2009). Tenure Committee Hearing Procedures (from Debasish Dutta to Christine Gerdes and David Nacht, Nov. 21, 2008).

- The steps in the process of establishing grievability could be eliminated, and the process of **moving directly to the grievance** would save time, unless grievability was contested by one or the other party.
- Include a statement allowing for both the grievant as well as the respondent permission to **delegate** the preparation of the grievance paperwork.

Grievance Hearing Boards

- **Establish a standing Grievance Hearing Board** or Grievance Hearing Committee, selected or elected from the body of Senate Assembly membership.
 - This group would **be readily available** to convene and adjudicate hearings as they arose. This would streamline the process of selecting members.
 - Another option is to **create a pool** of potential GHB members from the Senate Assembly Membership from which to choose, rather than assign one group to serve for a specific period of time.
- **Training** would be required for those engaged in the grievance hearing process, for those departments which use the Model Grievance Procedure.
 - A sub-committee or ad hoc committee from SACUA or Senate Assembly could be charged with the task of investigating available training. Or perhaps if necessary, develop our own training program. (Publication opportunity, white paper?)
- **Conflict of interest** should be avoided by forbidding the chairs of the Grievance Hearing Boards and Panels from originating from the home department of either the grievant or respondent. – This may have some bearing on the selection of the potential pool of Grievance Hearing Board participants.

OIE Issues

- **Address errors and corrections in OIE reports** during faculty grievance hearings.
- **OIE findings and reports** should be able to be **appealed** as part of the faculty grievance process since there is no other mechanism of appeal.

Respectfully submitted,
David S. Potter
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."