

Minutes of 18 February 2019  
Circulated 14 March 2019  
Approved 18 March 2019

THE UNIVERSITY OF MICHIGAN  
UNIVERSITY SENATE MEETING  
JOINT SENATE AND SENATE ASSEMBLY MEETING  
18 February, 2019

SENATE ASSEMBLY MEETING

18 February 2019  
Monday, 3:15  
Hussey Room  
Michigan League

**Present:** Ali, Atzmon (by virtue), Beatty, Burzo, Byon, Campbell, Caulfield, Chen, Costa, Conway (by virtue), Dal Cin, Drach, Djuric, Eaton, Fabilli, Fenno, Finlayson, Gallo, Herbert, Jones, Kahle, Kattari, Kannatey-Asibu, Larson, Laurence, Lippert, Likosky, Malek (by Virtue), Mao, Manera, Marsh (by Virtue), McInnis, Meek, Noll, Partridge, Passey, Philipich, Rao, Sandhu, Schultz (by virtue), Snyder, Spencer (by virtue), Suwanabol, Tonomura, Toyama, Traynor, Zhu.

**Alternate Requested:** Chatterjee, DeYoung, Hartley, Indjejikian, Meyer, Myers, Soloway, Turnley

**Alternate Present:** DaSilva (Dentistry)

**Absent:** Alam, Andrias, Blackburn, Carlos (by virtue), Chen, Ghaferi, Greve, Kaartinen, Knoblauch, Mendlow, Menon, Nelson, Papaleontiou, Shah, Shtein, Trumpey, Wright

3:21: Call to Order, Approval of Agenda and Minutes

Chair Marsh asked for approval of the agenda and approval for the minutes for 17 September, 2018  
The agenda and minutes were approved.

3:20: Announcements

Chair Marsh reminded the Senate Assembly that the SACUA election will take place at the March 18, 2019 meeting and invited further nominations for SACUA. He called attention to the fact that there are limits to the SACUA membership by unit; that there could be 3 from the College of Literature, Science and the Arts; 2 from the Medical School (one place available); 2 from the College of Engineering (one place available) and other colleges and units can have one member. There are continuing members of SACUA from the School of Music, Theater and Dance; the Library; UM-Dearborn and UM-Flint.

Chair Marsh invited volunteers and nominations for the 16 Senate Assembly committees, noting that a third of the members of each committee rotate off each year

Chair Marsh invited nominations for the Regents Public Service Award (<https://facultysenate.umich.edu/about/awards/regents-award-for-distinguished-public-service/>), the Faculty Governance award (<https://facultysenate.umich.edu/about/awards/distinguished-faculty-governance-award/>) and the Jackie Lawson Award (<https://facultysenate.umich.edu/about/awards/jackie-lawson-memorial-faculty-governance-award/>).

3:25: Votes on motions previously introduced before Senate Assembly

Chair Marsh introduced the three motions for Senate Assembly vote, to establish the new committee administering the Davis Markert Nickerson (DMN) Lecture, the Tri-Campus Resolution on Governance and the Statement on Principals of Due Process.

Chair Marsh said that SACUA recommended placing the organization of the Davis, Markert, Nickerson lecture on a more formal footing. The proposal is as follows:

Be it resolved that a permanent DMN Academic Freedom Lecture Committee of the Senate Assembly be established with a charge to select the annual speaker for the DMN lecture and coordinate the programming elements.

Chair Marsh called for a vote. The vote in favor was unanimous.

Chair Marsh reintroduced the motion on Governance (appendix 1). Professor Lippert said the point of the resolution is to help faculty across the three campuses participate in shared governance, adding that the resolution does not make new policy, but brings existing policies together. She did note that, since names for units differ on the three campuses, there have been instances when faculty have been denied the opportunity to participate in unit governance.

Chair Marsh called for a vote, the vote in favor was unanimous.

Chair Marsh introduced the resolution on Due Process (appendix 2). Professor Lippert said SACUA has concerns about due process, but that it cannot help faculty who do not use existing grievance procedure. The resolution sets out minimum standards to protect faculty whose conduct is under investigation.

Chair Marsh called for a vote. The vote in favor was unanimous.

3:30: Guest: Ravi Pendse Chief Information Officer (CIO) & Vice President for Information Technology

CIO Pendse reviewed technological changes that have had a major impact on society, noting that the first Smart Phone was introduced in the 2007 and that many of the world's fastest growing corporations such as Facebook, Uber and Lyft, Airbnb own no property. They are technologically driven content-providers. He invited Senate Assembly members to adduce other changes. Professor Caulfield pointed to on-line shopping. CIO Pendse discussed changes that have stemmed from this, especially the demolition of brick and mortar businesses. His concern is to enable better understanding of shifting paradigms, noting that young people are more adaptable to change than more senior people. He shared a video students had made in which they envisaged the world without the Internet.

CIO Pendse discussed his priorities as CIO. These include online security; the ability of people to move seamlessly between systems; the location of data; management of change within his organization; the future of networks; research computing; and the challenge of securing an open society. He stressed that his approach to problem solving is audience-centric and data informed. He said the introduction of two-factor verification is an important response to security issues. He noted that an issue hindering the ability of people to move seamlessly between systems is the size and decentralization of the University. The result is that classrooms are often equipped with different functionalities. With respect to the management of change in his unit, he said he seeks to create a culture of open communication and mutual respect. He shared one video about artificial intelligence, another about security challenges and a third on future challenges. He invited questions from the audience.

Professor Schultz asked about frustrations CIO Pendse had encountered as a central administrator. CIO Pendse said that he had encountered some friction in his efforts to work with different units to develop a culture of "One IT."

Librarian Spencer asked, given that the technological life-cycle was progressively shortening, and that there could be legal ramifications to such a choice, how CIO Pendse made the decision to invest in something new. CIO Pendse replied that he left legal issues up to General Counsel Lynch, and looked to the

faculty for advice and guidance. He added that he is appointing an external advisory board for his office, which will also include one of the developers of googledocs (now employed by Amazon).

Professor McInnis asked about interacting with industry for Information Technology services. CIO Pendse replied that such collaborations could be problematic if there was conflict about where data will be stored but that he was building capacity in his staff to ensure that the University got the best deal when engaging in these partnerships. He stressed the importance of engaging in conversations about what is right for the University, making decisions on a case-by-case basis.

Professor Katarri said technology can sometimes be divisive, and asked how CIO Pendse could create more equity amongst students. CIO Pendse replied that technology needs to be inclusive, and that smart phones have eliminated many divisions in the world, but that he is also partnering with Vice President for Student Affairs Harper to leverage financial resources for students. When it comes to faculty, he feels that so long as there are well trained, proactive, staff, appropriate help can be provided to faculty who are uncomfortable with technology.

Professor Laurence asked if email will be displaced, and, if so, how people will communicate in a post-email world. CIO Pendse said the death of email has been predicted for 20 years, but it has proved more resilient than other media, noting, by way of contrast, a movement amongst students away from Twitter in favor of Instagram. He allowed that he would like to reduce the importance of email (his staff uses the SLACK messaging system [<https://slack.com>]), but he does not foresee the end of email.

#### 4:30: Senate Assembly Electronic Voting

Chair Marsh said SACUA wants to expand the ways Senate Assembly members can express their views on issues of campus-wide importance. To that end SACUA supported placing the following motion to allow for electronic voting before Senate Assembly:

- Absentee votes may be called by the Chair of the Assembly if an important and urgent matter arises that cannot wait until the next scheduled Senate Assembly meeting, including over the summer recess.
- Senate Assembly members may transmit their votes by e-mail to the Secretary of the Assembly or his/her designate (e.g. the Director of the Faculty Senate Office) or through a secure web-based platform such as may be set up for the purpose.
- The Secretary of the Assembly, or designate, shall be responsible for tallying electronic absentee votes.
- The Assembly will be notified by e-mail that an absentee vote be held. Voting will be open for a period of 5 business days from the date of notification. After voting closes, the Assembly will be promptly notified of the results of the vote.
- The quorum for an absentee ballot shall be the same as that for conducting a Senate Assembly meeting; currently 50% of Senate Assembly members.
- Electronic votes shall not be considered secret, unless a secret ballot has been called for – e.g. election of SACUA members
- Senate Assembly members voting in person at an Assembly meeting shall not be permitted to vote electronically.
- The resolutions to be voted on electronically should normally have been discussed by the Senate Assembly prior to voting. A summary of any discussion should accompany the resolution
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Professor Katarri asked about the circumstances under which such votes would be called. Chair Marsh said there would not be electronic votes at regular meeting with a quorum, but that an electronic vote could be called on a measure on which a timely vote was required if there had been no quorum at the meeting

at which the issue was raised. He stressed that electronic voting is not intended to replace face-to-face meetings and discussions. A Senate Assembly member asked about a platform that would allow electronic discussion prior to an electronic vote. Chair Marsh said he did not have a specific platform in mind, that the point of the rules change is to open possibilities. Professor Likosky asked if the proposal would result in curtailed discussions. Chair Marsh replied that there are no rules preventing members of the assembly from circulating information as they see fit. Professor Likosky asked about developing an integrated system to enable exchange of data as well as voting. A Senate Assembly member asked about protocol. Marsh said votes would be “yes or no,” and that a decisive vote would require a majority of a quorum of Senate Assembly members. Professor Philipich asked about the time limit for a vote once it was called. Chair Marsh said it would be five days. Professor Philipich asked if anyone could make a motion. Marsh says that this would be up to the discretion of the chair of SACUA. Professor Costa said that the SACUA motion is consistent with current departmental practices. Professor Lippert added that this form of voting would only be used in a matter of urgency.

The motion carried with forty-five in favor, one opposed and one abstention

4:55: Adjournment

**Next Senate Assembly Meeting – February 18, 2019**

### **Appendix 1: Tri-Campus Committee Resolution on Governance**

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: TriCampus Committee Resolution on 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).<sup>1</sup> 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."<sup>2</sup> 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),<sup>3</sup> Regents Bylaws,<sup>4</sup> University of Michigan Faculty Handbook,<sup>5</sup> and Senate Assembly Rules.<sup>6</sup> 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.<sup>7</sup>
3. Procedures should address expectations of confidentiality, discretion, and timeliness of proceedings,

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<sup>1</sup> 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

<sup>2</sup> 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>.

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

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

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

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

<sup>7</sup> For AAUP's Recommended Institutional Regulations on Academic Freedom and Tenure see [https://www.aaup.org/sites/default/files/JA18\\_RIR.pdf](https://www.aaup.org/sites/default/files/JA18_RIR.pdf).

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."<sup>8</sup>
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.<sup>9</sup>
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.<sup>10</sup>
  - 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 or subject to review by 'the judgment of competent peers.'"<sup>11</sup> 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..."<sup>12</sup> 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,

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<sup>8</sup> 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

<sup>9</sup> *Ibid*, 3

<sup>10</sup> 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.

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

<sup>12</sup> *Ibid*, 3.

- 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.<sup>13</sup>
  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,<sup>14</sup> 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

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<sup>13</sup> 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>.

<sup>14</sup> 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>.



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.

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<sup>15</sup> 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).