

## **2016-17 UNIVERSITY OF MINNESOTA**

**MAY 11, 2017**

### **CIVIL SERVICE SENATE MINUTES: No. 2**

The second meeting of the Civil Service Senate for 2016-17 was convened in 3-100 Mayo Auditorium on Thursday, May 11, 2017, at 10:01 a.m. System campuses were linked by video. Checking or signing the roll as present were 24 civil service members. Chair Duane Orlovski presided.

#### **1. CIVIL SERVICE SENATE ORIENTATION**

Duane Orlovski provided a short orientation for all Civil Service senators. He reviewed the structure of the University Senate and the role that the Civil Service Senate and Civil Service Consultative Committee (CSCC) play. He noted that meetings are run according to Robert's Rules of Order and the Civil Service Senate Constitution, Bylaws, and Rules. Quorum is needed to take action, and at today's meeting this requires 19 members to be present. This body is in charge of approving proposed amendments to the Civil Service Employment Rules, after which they are sent to the Regents for final approval. He then reminded senators that attendance is taken for all CSCC and Civil Service Senate meetings, and members will be removed for non-attendance, so members should contact Becky Hippert if they cannot attend.

#### **2. CIVIL SERVICE CONSULTATIVE COMMITTEE REPORT**

Duane Orlovski reviewed the work done by the committee since the November Civil Service Senate meeting, noting that additional details are available in the minutes from those meetings. The Civil Service Consultative Committee (CSCC) Rules Subcommittee has been working with the Office of Human Resources (OHR) on updates to the Civil Service Employment Rules (Rules). CSCC met with President Kaler to discuss the Strategic Planning process and cost pool funding for the system campuses. The committee is working with representatives from OHR to create a list of lingering pain points from the Job Family Study (JFS) to determine which are actionable and then for CSCC to prioritize them for additional attention. CSCC also heard about a change to the financial job family recruiting process, and reviewed changes to performance appraisal programs.

#### **3. CIVIL SERVICE CONSULTATIVE COMMITTEE SUBCOMMITTEE REPORTS**

##### Communications

Becky Nelson reported that the Communications Subcommittee started its work this semester by sending a newsletter in March. A monthly newsletter will continue to be sent to all Civil Service employees. The subcommittee is looking for suggestions for the employee highlight section as well as information that would be useful for new employees system-wide.

##### Compensation and Benefits

Terri Wallace said that changes to the Regents Scholarship program are on hold due to the Maintenance of Status Quo (MSQ) in place. The Compensation and Benefits Subcommittee has been hearing about proposed legislation to change contribution rates for the Minnesota State Retirement System (MSRS) plan and has been working with the Rules Subcommittee on in-range salary adjustments, vacation donation, and flexible work time. As a member of the Benefits Advisory Committee (BAC), she noted that Medica will continue to serve as the

University's medical plan administrator but the wellness plan will be administered by Red Brick starting in 2018.

#### Rules

Jean Otto noted that a working group has been formed with CSCC members and staff from the Office of Human Resources (OHR) to review and update language. The topics being reviewed include: JEQ, classification in the same position, vacation accrual, voting, seniority and layoffs, bumping rights, retaliation in-range salary adjustments, removal of gender terminology, work arrangements, and sexual harassment. The goal is to present a package to the Regents in October after review by CSCC and the CS Senate, public hearings, and presentation to President Kaler and Vice President Kathy Brown.

#### **4. ELECTION FOR 2017-18 CIVIL SERVICE CONSULTATIVE COMMITTEE**

**1 Open Seat from Duluth**  
**1 Open Seat from Rochester**  
**1 Open Seat from TC At-Large Area**  
**1 Open Seat from TC Provost Area**  
**1 Open Seat from TC Health Sciences Area**  
**Action**

- 1 Open Seat from Duluth  
Colleen Dennie was elected
- 1 Open Seat from Rochester  
no senators; position cannot be filled at this time
- 1 Open Seat from TC At-Large Area  
Kevin Kelley was elected
- 1 Open Seat from TC Provost Area  
Missy Juliette was elected
- 1 Open Seat from TC Health Sciences Area  
Francis Strahan was elected

#### **5. ELECTION OF UNIVERSITY SENATE MEMBERS**

**1 Open Seat from Crookston**  
**1 Open Seat from Duluth**  
**1 Open Seat from Morris**  
**1 Open Seat from Rochester**  
**4 Open Seats from TC At-Large Area**  
**6 Open Seats from TC Provost Area**  
**6 Open Seats from TC Health Sciences Area**  
**Action**

- 1 Open Seat from Crookston  
Nan Thurston was elected
- 1 Open Seat from Duluth  
Colleen Dennie was elected
- 1 Open Seat from Morris  
Kim Schultz was elected
- 1 Open Seat from Rochester  
no senators; position cannot be filled at this time
- 4 Open Seats from TC At-Large Area  
Terry Beseman, Christopher Herbst, Kevin Kelley, and Elizabeth Roberts were elected
- 6 Open Seats from TC Provost Area

Molly Bendzick, Hongna Bystrom, Melissa Juliette, Hilary Strander, Douglas Trischler, Terri Wallace were elected  
6 Open Seat from TC Health Sciences Area  
Wendy Elvendahl, Sanoa Hagen, Duane Orlovski, Jean Otto, Elizabeth Richardson, and Francis Strahan, Evan Welo were elected

## **6. ELECTION OF SENATE COMMITTEE ON COMMITTEES MEMBERS**

Four individuals were nominated for the two open seats on the Senate Committee on Committees. As two individuals were not at the meeting, they will be contacted to determine if they accept the nomination, after which CSCC will note to decide which individuals will serve.

## **7. EQUITY, ACCESS, AND DIVERSITY COMMITTEE Resolution on Privacy of Student's Counseling and Medical Records Action**

### **Resolution on Privacy of Student's Counseling and Medical Records<sup>1</sup>**

Be it resolved that the Equity, Access, and Diversity Committee (EAD) acknowledges and endorses the internal practice, outlined below, established by the Office of General Counsel (OGC) related to the privacy of student counseling records:

Medical and counseling records will be used or disclosed for litigation between the student and the University only in limited circumstances, as described below. The University of Minnesota offers and encourages students to use on-campus medical services, including mental health services, and sexual assault counseling. Under federal law, campus counseling and medical records of students are not covered by the Health Insurance Portability and Accountability Act ("HIPAA"). Recognizing the sensitivity of medical and counseling records and to promote the full use of resources by students, the University applies the same privacy standard as HIPAA would in cases where litigation occurs between the institution and the student.

Specifically, when the University is involved in litigation with a student, the University will not share the medical or counseling records of that student with the University's attorneys or with the courts unless the litigation relates directly to the medical or counseling treatment itself or the payment for that treatment, and even then will share only those records that are relevant and necessary to the litigation. For other litigation, the University's attorneys will not access the student's treatment records without first obtaining a court order or the student's consent. This policy recognizes students' reasonable expectation that their conversations with University medical professionals and counselors are confidential. This policy does not restrict the University's attorneys from complying with litigation hold requirements.

Some examples:

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<sup>1</sup> A previous resolution on student records was adopted by the Equity, Access, and Diversity Committee on January 30, 2017 and subsequently adopted by several other committees. The proposed resolution noted here, drafted with the assistance of the Office of the General Counsel, is meant to replace the January resolution. The new resolution is faithful to the intent of the original while resolving a number of ambiguities. The new resolution will be submitted for consideration at the May 2017 meeting of the University Senate.

1. If a student sues the University for malpractice related to the provision of medical or counseling services, records may be disclosed to University attorneys to the extent relevant and necessary to defend against the claim.
2. If a student brings a claim *unrelated* to the provision of medical or counseling services, records will *not* be disclosed to University attorneys except with the student's consent or a court order, even if the student is asserting emotional distress damages.

EAD acknowledges that although the above has been the Office of the General Counsel's practice, it has not previously been in writing. Putting the practice into writing and encouraging University counseling centers to include the information in their privacy statements allays the concerns raised about this issue by events at other institutions.

EAD asks the University Senate, and encourages the University administration, to likewise acknowledge and endorse this principle and these practice standards.

**COMMENT:**

This privacy issue came to the Committee's attention when a University of Oregon student sued the University for emotional distress caused by its alleged mishandling of her sexual assault case. Although the University found that three varsity basketball players had raped her and dismissed them from the University, the victim alleged that the University delayed the investigation to allow the players to finish the basketball season. In connection with the litigation, the University administration accessed her post-rape therapy records from the University's counseling center and provided them to the General Counsel's Office.

The University could access her records because students' campus counseling and medical records are not protected by the federal Health Insurance Portability and Accountability Act (HIPAA). Instead, the records are covered by the federal Family Educational Rights and Privacy Act (FERPA). FERPA allows a university to access a student's counseling and medical records, without a court order or subpoena, if the student or the student's parents sue the university. 20 U.S.C. § 1232g; 34 C.F.R. § 99.31(a)(9)(iii)(B).

In response to the University of Oregon case, the United States Department of Education issued a "Dear Colleague Letter" on this issue. It encourages higher education institutions to refrain from accessing students' counseling and medical records except in connection with litigation directly involving them. However, the Letter is not binding, it does not state that the University of Oregon acted improperly, and it does not flatly state that accessing the records must be limited to litigation involving them.

The University of Minnesota provides counseling and medical services to our students and encourages them to use those services. However, particularly for sensitive matters, students will not use those services or will not be candid with service providers if their privacy is not respected.

Endorsed by:

Academic Health Center Student Senate Consultative Committee (February 15, 2017)

Disabilities Issues Committee (March 22, 2017)

P&A Consultative Committee (March 22, 2017)

Faculty Affairs Committee (April 14, 2017)

Civil Service Consultative Committee (April 20, 2017)

**JEREMY JENKINS, CHAIR  
EQUITY, ACCESS, AND DIVERSITY COMMITTEE**

**DISCUSSION:**

Duane Orlovski stated that this resolution stems from an incident at the University of Oregon in 2015 in which a victim of sexual assault filed suit against the institution. The institution then accessed her on-campus counseling records. The people who utilize these services think that their records will be confidential. However, these records are covered by FERPA, not HIPAA, so they are University-owned.

The Equity, Access, and Diversity Committee worked with the Office of the General Counsel to determine the University’s response in a similar situation.

With no discussion, a vote was taken and the motion was approved.

**APPROVED**

**8. SOCIAL CONCERNS COMMITTEE  
Resolution on Equal Opportunity and Title IX Training  
Action**

**Resolution on Equal Opportunity and Title IX Education**

The University Senate recommends that all University employees be required to take an online or in-person course, administered by the Office of Equal Opportunity and Affirmative Action, on University equal opportunity and Title IX policies.

All employees who are currently working at the University, including full- time employees, part time employees, graduate and undergraduate student employees, and vendors working on campus who regularly supervise University employees, will be required to take the course within a specific and reasonable time frame after it is made available and widely publicized. Nonexempt employees, including students, will be authorized to take this course during work hours. New employees will have a set period of time after their start date to take the course. Shorter refresher modules, covering changes in policies and practices, will be offered and required every so many years, as changes warrant. EOAA or another appropriate University unit will monitor completion of the course, send reminder notices, and track the effectiveness of the course.

**COMMENT:**

The University of Minnesota is committed to providing an equitable work and learning environment that is free from discrimination and harassment. The Board of Regents’ Equity, Diversity, Equal Opportunity, and Affirmative Action Policy prohibits discrimination and harassment on the basis of race, color, creed, religion, national origin, sex, age, marital status, disability, public assistance status, veteran status, sexual orientation, gender identity, and gender expression.<sup>2</sup>

Title IX is a federal statute that prohibits sex discrimination in education programs. Sex discrimination includes sexual harassment and sexual violence. University policies prohibit

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<sup>2</sup> Board of Regents Equity, Diversity, Equal Opportunity, and Affirmative Action Policy  
[http://regents.umn.edu/sites/regents.umn.edu/files/policies/Equity\\_Diversity\\_EO\\_AA.pdf](http://regents.umn.edu/sites/regents.umn.edu/files/policies/Equity_Diversity_EO_AA.pdf)

sexual harassment and all forms of sexual violence, including sexual assault, stalking, and relationship violence.<sup>3</sup>

The University of Minnesota's Office of Equal Opportunity and Affirmative Action (EOAA) was established to ensure that all University community members uphold federal and state civil rights laws and regulations, as well as University policies. EOAA provides education to University employees based on these laws and policies. However, this education is not mandatory. Accordingly, and based on continued concerns about campus climate and University safety, and to ensure that all university members uphold, are aware of, and have access to the protections of federal and state civil rights laws, the University Senate recommends that all University employees be required to take an online or in-person course, administered by EOAA or another appropriate University office, that would include the following content:

- Identifying and responding to discrimination, retaliation and nepotism;
- Identifying and responding to sexual harassment;
- Sexual assault, stalking and relationship violence policy;
- Reporting obligations for all employees;
- EOAA's role; and
- Resources for complainants and reporting<sup>4</sup>

The proposed required education is a synthesis of the most critical elements of University policies determined by EOAA. The offering would be approximately one hour in length. The in-person option will be offered subject to EOAA's or another teaching unit's capacity and scheduling availability.

Endorsed by:

Faculty Affairs Committee (February 14, 2017)

Civil Service Consultative Committee (March 23, 2017)

P&A Consultative Committee (April 19, 2017)

**MARK PEDELTY, CHAIR  
SOCIAL CONCERNS COMMITTEE**

## **DISCUSSION:**

Randy Croce, member of the Social Concerns Committee, joined the meeting to provide background on the resolution. He said that the committee starting working on this topic last year in consultation with the Office for Equal Opportunity and Affirmative Action (EOAA). The resolution was revised several times after consultation with other Senate committees, include the Civil Service Consultative Committee. He noted that the Administrative Policy: Sexual Misconduct that is being crafted now requires all employees to serve as mandatory reporters, so mandatory training on this requirement is necessary so employees are aware of their responsibilities.

With no discussion, a vote was taken and the motion was approved.

**APPROVED**

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<sup>3</sup> Board of Regents Sexual Harassment

<http://regents.umn.edu/sites/regents.umn.edu/files/policies/SexHarassment.pdf>

Administrative Policy Sexual Assault, Stalking and Relationship Violence

<http://policy.umn.edu/operations/sexualassault>

<sup>4</sup> The proposed training will also include information about the system campus Title IX Coordinators and reporting structures.

## **9. TOPICS FOR 2017-18 Discussion**

Ray Muno and Becky Nelson, 2017-18 Civil Service Senate leadership, then discussed topics that they are hoping to pursue next year:

- Continued work on impacts from the Job Family Study
- Merit pay
- Whether seniority units and bumping rights from the Rules fit the current needs of Civil Service employees
- Structure of Civil Service subcommittees
- Legislative outreach
- Topical discussions at Civil Service Senate meetings and the number of meetings per year

They then asked members for other topics to be considered. Members made the following suggestions:

- Sick leave and vacation time remaining separate
  - Ray Muno noted that separate sick leave and vacation time versus paid time off has been discussed many times previously but there has not been enough interest to make a change
- 2 weeks of leave for non-birth parents and parents of adopted children
  - Ray Muno noted that the P&A Senate approved a resolution asking the University to provide six weeks of paid leave for all parents. The Civil Service Consultative Committee will be considering the resolution next week.
- Flex time scheduling needs more information for supervisor to have better consistency in its application

Ray Muno asked senators to email him at anytime with additional suggestions or questions for the next year.

## **10. OLD BUSINESS**

**NONE**

## **11. NEW BUSINESS**

Terry Beseman said that the Civil Service Library Group is meeting on May 16, 1:00-3:00 pm in Andersen Library, and all West Bank Civil Service employees have been invited as a way to engage them more in Civil Service governance.

Ray Muno then announced that he is looking for other Civil Service Senate members to help staff the table at New Employee Orientation. Once dates are set for July-December 2017, he will send those out to solicit volunteers for specific dates.

## **12. ADJOURNMENT**

The meeting was adjourned at 11:30 a.m.

**Rebecca Hippert**

