

Joint Faculty Consultative Committee (FCC) & Senate Consultative Committee (SCC) Meeting
January 19, 2017
Minutes of the Meeting

These minutes reflect discussion and debate at a meeting of a committee of the University of Minnesota Senate; none of the comments, conclusions, or actions reported in these minutes represents the views of, nor are they binding on, the senate, the administration, or the Board of Regents.

[In these minutes: Draft of Sexual Misconduct Policy]

PRESENT: Colin Campbell (chair), Etty Deveaux, Raymond Muno, Catherine French, Dan Feeney, Kathie Krichbaum, Michael Kyba, Monica Luciana, George Trachte, Susan Wick, Robert Blair, Janet Erickson, Greta Friedemann-Sanchez, Joseph Konstan (vice chair), Peggy Nelson, Ruth Okediji, Amy Pittenger, Peter Tiffin, Trish Palermo

REGRETS: Duane Orlovski, Shawn Curley, Noelle Sjoquist

ABSENT: Catherine St. Hill, Zane Bloom, Jonathan Borowsky, Taylor Cronen, John Freude, Katie Ledermann

GUESTS: Tina Marisam, director and Title IX coordinator, Office of Equal Opportunity and Affirmative Action; Kimberly Hewitt, deputy chief of staff, Office for Equity and Diversity; and Brent Benrud, senior associate general counsel, Office of the General Counsel

OTHERS ATTENDING: Lyle Peterson, Office of the President

1. Draft Sexual Misconduct Policy: Professor Campbell welcomed today's guests - Tina Marisam, director and Title IX coordinator, Office of Equal Opportunity and Affirmative Action; Kimberly Hewitt, deputy chief of staff, Office for Equity and Diversity; and Brent Benrud, senior associate general counsel, Office of the General Counsel – who were invited to provide information on the draft Sexual Misconduct Policy, which had been distributed to FCC and SCC members along with the agenda.

Ms. Marisam began by providing members with background information and explained that the Department of Education, Office for Civil Rights has requested that the University merge its Sexual Harassment Policy and its Sexual Assault, Stalking, & Relationship Violence Policy into one comprehensive policy making the reporting process more clear, among other things.

Ms. Marisam then spent a few minutes walking members through a PowerPoint presentation and highlighted the following information about the revised Sexual Misconduct Policy and said the new policy accomplishes the following:

- Merges the Sexual Harassment Policy and the Sexual Assault, Stalking, & Relationship Violence Policy.

- Broadens reporting responsibility to all employees.
- Adds definitions of sexual contact, incapacitation and coercion.
- Adds an amnesty provision if drug or alcohol violations come to light during a sexual assault investigation.
- Adds details about the sexual misconduct investigation and adjudication procedures.

Next, Ms. Marisam provided information on the student investigation process and walked members through the process highlighting the following:

- The Office of Equal Opportunity and Affirmative Action (EOAA) contacts the impacted person to 1) explain EOAA's procedures; 2) invites the impacted person to meet to initiate an investigation or to ask about EOAA's processes; and 3) provides safety and support resources.
- In most cases of alleged sexual misconduct by students, EOAA will not investigate if the impacted student does not want an investigation.
- In cases where EOAA investigates an allegation, both students are allowed to bring a lawyer and/or an advocate provided by the University.
- A police investigation may occur simultaneously or before the EOAA investigation.
- The police investigate based upon the "beyond a reasonable doubt" standard.
- The University's EOAA office, like all other universities, uses the "preponderance of the evidence" standard or "more likely than not" standard.
- EOAA sends its written investigative findings to the Office for Community Standards (OCS) formerly called the Office for Student Conduct and Academic Integrity (OSCAI), which determines whether sanctions are appropriate.
- OCS sends EOAA's written investigative findings and any proposed sanctions to both parties.
- Both parties can request a hearing before the Student Sexual Misconduct Subcommittee (SSMS) panel.
- Both parties can appeal the SSMS panel's decision to the provost.

Moving on, Ms. Marisam then highlighted the employee investigation process, which entails the following:

- EOAA investigates as a neutral party. In some cases, informal problem solving may be more appropriate.
- EOAA forwards its report and conclusions to the parties and responsible University authority, and will recommend discipline if there are any policy violations.
- If EOAA does not find a policy violation, it can still recommend appropriate remedies.

Before taking questions/comments, members' attention was turned to the University's reporting and personal support resources. Reporting resources include:

- The department and/or central Office of Human Resources.
- EOAA office (<https://diversity.umn.edu/eoaa/>)

- UReport/EthicsPoint – 1-866-294-8680 -
<https://secure.ethicspoint.com/domain/media/en/gui/9167/index.html>.

Personal support resources include:

- The Aurora Center – 24-hour help line 612-626-9111 - <http://aurora.umn.edu/>.
- Employee Assistance Program (EAP) -
<https://humanresources.umn.edu/benefits/employee-assistance>.
- Student Counseling Services (SCS) - <https://counseling.umn.edu/>.

Member's questions and comments included:

- Professor Konstan commented that what worries him about a policy like this is that the policy blurs the line between what is in the criminal realm and what is considered misconduct according to University rules/policies. He added that he thinks it needs to be made clear that to the public that University investigators have their own set of conduct standards that are separate from the law. While Kimberly Hewitt, deputy chief of staff, Office for Equity and Diversity, acknowledged his point, she noted that the University has values it needs to uphold.
- Are sexual misconduct investigations handled differently than other types of misconduct investigations, asked Professor Konstan? Yes, said Ms. Hewitt, and noted that EOAA has a group of people trained specifically to do sexual misconduct investigations. The issues around sexual misconduct are different and much more complex than other types of misconduct issues, e.g., plagiarism.
- Professor Okediji made a number of points the first being that more language/verbiage in a policy does not necessarily translate into more clarity. With that said, she suggested doing more training, particularly with male students. Next, in Professor Okediji's opinion, any messaging to students about sexual misconduct needs to involve student leaders because of the role peer effect plays. Lastly, she asked the guests involved in drafting this policy to be mindful when drafting this policy about being mindful of cultural considerations around the issue of sexual misconduct, and suggested that there perhaps should be dedicated training for international students because they need to be made aware of the cultural norms in our society related to sexual misconduct. Ms. Hewitt noted that there are a number of resources available to students and added that student leaders and many other groups, including governance groups, will be consulted on this policy before it is finalized.
- Professor Friedemann-Sanchez asked whether the policy would contain any “aiding and abetting” language. Ms. Marisam said this language currently exists in the Student Conduct Code and it will be included in the Sexual Misconduct Policy as well.
- In response to a question from Professor Friedemann-Sanchez about including definitions in the policy, Ms. Hewitt explained that there will definitely be definitions in the policy, e.g., incapacitation, affirmative consent, etc., but cautioned about not wanting some of the verbiage to be too specific.

- Professor French asked about how students will learn about and be trained on the policy. Ms. Hewitt noted that the Office for Student Affairs provides incoming students with training on the policy during orientation.
- Professor Pittenger said new students are given so much information at orientation, which can be overwhelming. She suggested that rather than just providing this information at orientation to conduct annual training sessions for all students. Additionally, as part of the training, she suggested including scenarios of sexual misconduct violations from other institutions.
- Professor Luciana pointed out that in the second paragraph of the policy that talks about who the policy applies to, faculty are the only group that are not mentioned specifically. Ms. Hewitt and Marisam noted this and thanked Professor Luciana for her observation.
- Professor Okediji asked about the role of faculty in administration of the policy. She said it will be critical for the sexual misconduct investigators to have the requisite expertise to be sure the policy is being appropriately applied, particularly with respect to the different legal standards versus standards derived from the University's values that Ms. Hewitt previously mentioned. She emphasized that it is important for students and the University community to understand the heightened expectations the institution's values impose and that violations of campus norms may sometimes be treated more severely than violations of a legal rule. Professor Okediji said ensuring clarity in communications to students about these matters is important as a matter of due process, transparency and for fairness. Ms. Marisam commented that this was a helpful comment and said that they would seek additional guidance on how to clarify the differences among the standards by which conduct is judged, and that additional work will be done to make sure communication is effective and consistent among the various University's offices.
- Professor Konstan raised the question of double jeopardy to which Ms. Hewitt responded that both parties have equitable appeal rights.
- Professor Campbell noted that while an EOAA hearing is not a legal proceeding *per se*, the process comes across as having a quasi-legal appearance. Many people do not understand that the University policy is not tied to any kind of criminal investigation, and this is confusing. To make his point, he specifically referenced section IV (C, 2) on page 4 of the policy that states if people do not cooperate with an investigation, they could be punished. He worries that this seems to be the same thing as being forced to testify against oneself.
- In response to a question from Professor French about the appeals process, Ms. Hewitt explained that appeal cases are completely re-evaluated and the hearings are *de novo*, which means they are “new hearings” by a special panel who have specific training in this area.
- Professor Okediji said in section V “Discipline and Other Responsive Actions” that this is a list of penalties and not responsive actions and this should be made clear. Nothing in this section is a “responsive action.” Professors Campbell and Konstan agreed and said the list used to guide the University Authority when determining appropriate “responsive actions” creates uncertainty and seems to be

one-sided. They also agreed with Professor Okediji about making the policy clear about sanctions/penalties and not calling them responsive actions.

In light of time, Professor Campbell thanked today's guests for the information they provided and for soliciting FCC and SCC members' opinions about the draft policy.

2. **Adjournment:** Hearing no further business, Professor Campbell adjourned the meeting.

Renee Dempsey
University Senate Office