

FACULTY CONSULTATIVE COMMITTEE

March 5, 2015

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 reflect the views of, nor are they binding on, the Senate, the Administration, or the Board of Regents.

[In these minutes: Update from Ad Hoc Committee formed by the Office on Student Affairs regarding the Student Conduct Code and Using and Leasing University Outdoor Space Policies, Graduate Student Bill of Rights, Open Seats on Benefits Advisory Committee, Research Reviews]

Present: Rebecca Ropers-Huilman (chair), Chris Uggen (vice chair), William Durfee, Eva von Dassow, Linda Bearinger, Gary Cohen, Gary Gardner, Joseph Konstan, Kathleen Krichbaum, Susan Wick, Colin Campbell, James Cloyd, Allan Erbsen, Janet Ericksen, Karen Mesce, Jean Wyman

Regrets: Maria Gini, Jigna Desai

Student Conduct Code and Using and Leasing University Outdoor Space guests: Vice Provost for Student Affairs and Dean of Students Danita Brown Young; Megan Sweet, chief of staff, Office for Student Affairs; Sharon Dzik, director, Office for Student Conduct and Academic Integrity; and Tracy Smith, deputy general counsel, Office of the General Counsel

Graduate Student Bill of Rights guests: Nicole Scott, COGS executive member and doctoral candidate in Cognitive Sciences; Robert Stewart, student senator and PhD candidate in Sociology; Courtney Coombes, COGS representative and PhD candidate MCDB&G; and Andrew McNally, COGS president and PhD candidate in American History

Others attending: Jason Langworthy, board associate, Policy & Committees, Office of the Board of Regents; and Jon Steadland, associate to the deputy chief of staff, Office of the President

1. **Call to order** – Professor Ropers-Huilman convened the meeting and called for a round of introductions. She then welcomed the guests who were invited to provide information about the findings of the Student Affairs ad hoc committee that was formed to look at the concerns raised by the Faculty Consultative Committee (FCC) concerning the Student Code of Conduct (http://regents.umn.edu/sites/regents.umn.edu/files/policies/Student_Conduct_Code.pdf) and the Using and Leasing University Outdoor Space: Twin Cities (<http://www.policy.umn.edu/Policies/Operations/RealEstate/OUTDOOR.html>) policies.

2. Update from Ad Hoc Committee formed by the Office on Student Affairs regarding the Student Conduct Code and Using and Leasing University Outdoor Space Policies - Vice Provost for Student Affairs and Dean of Students Danita Brown Young began by reporting that the Using and Leasing University Outdoor Space and Amplified Sound policies are scheduled to undergo a comprehensive review this year, and this review is expected to start shortly. The owners of these policies will be forming a review committee and one member of the FCC will be invited to join.

Since this topic was last discussed with the FCC in November 2014, the concerns raised by the FCC have been shared with the committee conducting the reviews. It was agreed that the Using and Leasing University Outdoor Space policy, in particular, needed to be strengthened.

Next, Tracy Smith, deputy general counsel, Office of the General Counsel, spent a few minutes talking about the Student Conduct Code. She noted that the Code focuses on conduct or behavior. At the November meeting, the FCC was particularly interested in the two sections of the Code that dealt with disruption, one dealing with disruption of the academic environment and the other disorderly conduct, which deals more broadly with obstructing or disrupting teaching, research, etc.

Ms. Smith turned members' attention to a handout that she distributed containing excerpts from other institution's student conduct codes dealing with disruption and an excerpt from a 2004 journal, *Navigating Past the "Spirit of Insubordination": A Twenty-First Century Model Student Conduct Code With a Model Hearing Script*. These excerpts illustrate that the University's broad language related to disruptive or obstructive behavior in its Code is common.

Regarding the content of expression being charged under disrupting activities, while this could conceivably happen, Ms. Smith said it is quite rare but cited the Mortuary Science case of a few years back as an example. She noted that it has been her experience that disruption is typically behavior/conduct-related.

As a reminder, said Ms. Smith, Code violation cases are always reviewed. Any student charged with a Code violation has a right to a hearing by faculty and peers. These individuals also have a right to appeal to the Provost as well as to the Minnesota Court of Appeals. She noted that the Mortuary Science case she cited earlier went to the Minnesota Court of Appeals and eventually on to the Minnesota Supreme Court, which affirmed that violating the faculty member's rules justified disciplinary action.

Professor Cohen pointed out that the document that was distributed does not contain examples of model language about stipulations for permission by groups to assemble. Is there comparative language from other institutions as it relates to the Using and Leasing University Outdoor Space: Twin Cities policy? Ms. Smith said she did not include any examples because this policy will be undergoing a comprehensive review, and during the review process other institution's policies will be taken into consideration.

Regarding the concerns raised at the November discussion of the Student Conduct Code, Ms. Dzik, director, Office for Student Conduct and Academic Integrity, proposed putting FAQs addressing what is and is not admissible behavior on the Student Affairs website. A number of other institutions have websites specifically addressing expression and freedom of speech. Professor Durfee said that he likes this idea because, in his opinion, it is important to clarify the boundaries. While there exists a somewhat vague definition of disruptive behavior, it would be good to clarify it further, particularly for the person/people who need to interpret the definition.

Professor Erbsen noted that given how broadly the disruption language is written in the current Code that it could be construed to extend to the expression of a viewpoint. For example, a student could say that his/her ability to learn is being disrupted by a classmate expounding a particular point of view with which he/she disagrees, and wants the University to take action. While he is reasonably confident the administration would not pursue such a request, it could be viewed as the University not enforcing its Code. Any FAQs or interpretive documents should make it clear that disruption is not a purely subjective standard, and it is not a standard that is linked to viewpoint. Professor Erbsen added to the extent that the University states out front that it does not perceive its disciplinary rules to extend to such and such type of behavior, it prevents students from complaining that their expression is being “chilled,” or complaining that the rules are not being enforced.

Professor von Dassow said she recognizes it is a delicate matter to write policy and its interpretation. She said she worries about the criterion for deciding what disrupts and what does not leaving it up to the arbitrary decision-making power of an administrator. Depending on the language used could prohibit the exercise of the right to free assembly and free speech.

A few members then shared examples of disruptive classroom experiences. Ms. Dzik said she deals with these matters on a regular basis and is always happy to talk with faculty on how best to handle and resolve situations they are facing.

In light of time, Professor Ropers-Huilman thanked the guests for their time and for providing an update. She added that she looks forward to hearing more about the review process as it progresses.

3. Graduate Student Bill of Rights – Professor Ropers-Huilman welcomed Nicole Scott, COGS executive member and doctoral candidate in Cognitive Sciences; Robert Stewart, student senator and PhD candidate in Sociology; Courtney Coombes, COGS representative and PhD candidate MCDB&G; and Andrew McNally, COGS president and PhD candidate in American History to talk about the draft Graduate Student Bill of Rights. Before launching into the discussion, Professor Ropers-Huilman called for another round of introductions.

Ms. Scott, COGS executive member and doctoral candidate in Cognitive Sciences, reminded members that she and Mr. McNally came before the committee last fall to get

members' input on what should be included in a Graduate Student Bill of Rights (GSBR). Since that time, the original draft document underwent a number of revisions and has been approved by the Student Senate as well as the Council of Graduate Students General Assembly. As written, the document is for graduate students, and this is because professional students have different needs making it important for them to have their own bill of rights. Also, since last fall, reported Ms. Scott, the Graduate Education Council has looked at this document twice as has the Academic Freedom and Tenure (AF&T) Committee. Then, next week, the Senate Committee on Educational Policy (SCEP) will look at Article 1, and after that it will go back to Provost Hanson's office for additional input. The goal today is to get faculty feedback from FCC members.

Mr. Stewart, student senator and PhD candidate in Sociology, said the three main goals of the document are:

1. Compile all relevant policies into one comprehensive document.
2. Create/establish best practices/guidelines.
3. Set direction for future goals.

Mr. McNally, COGS president and PhD candidate in American History, added that another goal is to have the document be a living document that will actually be used, and not filed away somewhere.

Professor Konstan began by making four suggestions:

1. Regarding the "right to quality advising," do faculty have the right to no longer advise a student that is not performing up to expectations? Along these same lines, does a student have the right to be assigned an advisor if no one wants to advise the student?
2. Regarding "outside work," this should not be included in a bill of rights because it is out of the jurisdiction of the document. For the vast majority of international students coming to the University from around the world, they do not have the legal right to pursue work outside the University. The suggestion was made to couch this right by making it clear that outside work includes taking other positions at the University.
3. Regarding the issue of academic freedom, some of the work done by graduate students is very much work for hire and does not have full academic freedom so the language in this right needs to be carefully articulated.
4. Graduate students should have the right to be informed before taking on a project about the restrictions or limitations associated with the project, e.g., publishing restrictions, intellectual property restrictions. Students should have the right to know this information before they work on a project rather than being told along the way.

Professor Bearinger asked the guests to reconsider Article 1 Section 1.02 (a) – Graduate students will be consulted to changes in their degree requirements, and be provided notification of these changes by the program in a timely manner. In her opinion, the initial degree program that was discussed and agreed upon when the student was admitted is the document that needs to be followed. If a faculty member later decides to add another course for the student, the student should not be required to take additional

coursework beyond the original agreement. The committee was in agreement that this language needed clarification.

Professor Erbsen said the terminology “bill of rights” does not accurately describe the document. A bill of rights document is not a best practices document. Some of what is included in the document should be framed as rights and not as best practices. A lot of other items in the document, are not about graduate student rights, but are about obligations of faculty, e.g., advising. He suggested drafting the document in two parts, a bill of rights section and a second section outlining what faculty shall provide with different grievance procedures for each section.

Regarding the Article 1 Section 1.02 – Graduate students have the right to timely academic achievement, Professor von Dassow said it is her perspective that students have the responsibility for their timely academic achievement. Students do have a right to learn, and it is the student’s responsibility to do so. There also are a number of things outlined in the document that are articulated as rights that are pragmatically not possible in the way the statements seem to imagine.

Professor Gardner made the following points:

- There are institutional constraints related to hiring graduate students that are out of a faculty member’s control.
- The academic freedom section of the document should include term for hire or requirements of research assistantship verbiage given the variety of funding sources, which do not necessarily grant academic freedom.
- Regarding Article 4 Section 4.02 – Graduate students have the right to pursue non-academic careers, this should be phrased in a positive rather than negative way.

Professor Campbell said he believes that the entire FCC strongly supports what the GSBR is trying to accomplish. Having said that, in Article 1 Section 1.04 – Graduate students have the right to a reasonable procedure for changing advisors, without fear of retaliation – in the Medical School and many other colleges, the student has to persuade someone on the faculty to fund them and some people unable to do this. To say that faculty have an obligation to do this is contrary to fact/reality.

Professor Ropers-Huilman commented on Article 4 Section 4.01 – Graduate students have the right to participate in all political and governance processes of the academic community without retribution. When a faculty body elects graduate faculty, they may decide to give governance rights or to withhold those rights. This statement makes her uncomfortable because some graduate faculty do not have governance rights.

The document, said Professor Konstan, seems to be written for those pursuing terminal research degrees (such as the Ph.D. and M.F.A.), but there are a lot of other types of graduate programs at the University. If the focus of the document is on those pursuing terminal degrees than this should be made clear.

This is a document that addresses graduate students/faculty relationships, said Professor Bearinger, and suggested the guests reach out to FCC members after the meeting to drill down on the issues mentioned today to speed up the process for completing the document given its importance. Mr. McNally agreed and added it would even be helpful to have a group that would include FCC volunteers that would periodically review the document after it has been institutionalized.

Professor Ropers-Huilman thanked the guests and reminded them of the widespread support that exists for the document.

4. Open seats on Benefits Advisory Committee: Professor Ropers-Huilman explained that the FCC needs to fill a seat that has been vacated mid-term on the Benefits Advisory Committee (BAC), and then also to put forward two names to the BAC Committee of Selection, which will meet later this spring, to fill one of the four faculty seats on the BAC. Copies of the applications received had been sent out to members along with the agenda and were distributed again at the meeting.

After some discussion about the applicants, members unanimously voted to appoint Professor Jean Abraham (Division of Health Policy and Management) to fill the remaining one year plus term of Professor Judith Garrard who recently retired. In addition, members identified two faculty to put forward to the BAC Committee of Selection, the body that will make the final decision on who will serve on the BAC.

5. Regent selection update: Before moving on to talk about research reviews, Professor Ropers-Huilman asked Professors Bearinger and Gardner to briefly provide an update on last night's regent selection event.

After some background information, Professor Bearinger reported the results of last night's regent election:

- Congressional District 1 – Patricia S. Simmons
- Congressional District 3 – Darrin M. Rosha
- Congressional District 4 – Richard B. Beeson
- Congressional District 6 – Michael D. Hsu
- Congressional District 7 – Thomas J. Anderson

As previously discussed with the Board of Regents Office, Professor Bearinger said with this election there is an opportunity for faculty to play a role in helping the new regents understand what faculty do given the misconceptions that exist. She also requested that she and Professor Gardner be given more time on FCC agendas in order to keep members abreast of what is happening at the legislature. In light of time, Professor Ropers-Huilman thanked Professors Bearinger and Gardner for the time they spend at the legislature and for encouraging the FCC and their colleagues to be more involved.

6. Research reviews: Prior to this meeting, Professor Ropers-Huilman reported that she and Professor Uggen attended a meeting to talk about the logistics as well as other aspects of the March 6 Faculty Senate meeting when the report by the external review

team regarding the Human Subjects Protection Program will be discussed. She noted that weather could affect the guests' ability to attend in person, and, if so, arrangements will be made for them to attend electronically. This meeting will focus strictly on the report and its findings. Professor Ropers-Huilman reminded the committee that external review report is only one of the reports that will be coming out on this topic.

Professor Wyman asked for members' input as to what they believe the FCC's role should be in relationship to monitoring what happens now that the external review team has issued its report and recommendations. The institution will need to decide what the standard for research ethics at the University should be, and, in doing so, it will be critical that faculty are consulted throughout the process.

Professor Cohen said it will be important that all efforts be focused on improving the Institutional Review Board (IRB) process, improving the relationship and understanding between Fairview and medical research activities, and ensuring whistleblowers are protected. It will be critical to not get sidetracked by personnel matters, which should be dealt with using existing personnel procedures.

The current system, said Professor Konstan, requires an amazing number of research protocols be addressed by a limited number of people who do not have the time to do so. There are two potential answers to this problem 1) significantly increase the number of IRBs or 2) focus on triaging and prioritization. He said he does not believe the report adequately addressed the processes used by other institutions for devoting more time to research protocols. It would be useful to get a sense of how other institutions manage their research protocols. Professor von Dassow pointed out that the report did, however, highlight that attention to administrative details could be minimized in favor of substantive matters. Yes, agreed Professor Konstan, but, in his opinion, it makes most sense to spend more time on high-risk research protocols. While there have been IRB improvements over the years, an immense amount of effort is spent on low to no risk exempt research. Thought needs to be given to managing research protocols without consuming the organization.

In response to the question posed by Professor Wyman about what the FCC's role should be, Professor Cloyd suggested it should be to ensure at the end of the day that the good reputation of the institution and faculty is preserved, and faculty are able to conduct research with vulnerable populations. The last thing faculty want to have happen is an over response on the part of the institution that often occurs in these situations so that those who would benefit from the research are not able to be helped. The FCC should carefully examine the proposed solutions to ensure that there is a reasonable balance between protecting the institution's reputation while still allowing research to be conducted on vulnerable populations who would benefit from that research.

Professor Ropers-Huilman noted that the phrase in the report that is most troubling for her is "culture of fear." In her opinion, cultures are often much harder to change than structures. Professor Uggen suggested inviting Professor Michael Oakes, student research IRB chair, to an FCC meeting.

Professor Bearinger said she would like the FCC to remember the Senate Research Committee (SRC) throughout this process. Has there been any discussion about this topic in the SRC?

Professor von Dassow also wonders about the possibility of over-reacting by increasing formulaic training requirements and generating even more paperwork, etc., which would further burden those involved in human subjects research without yielding the requisite substantive improvements. She pointed out that the external review panel took note of the fact that the University's Research Strategic Plan and the School of Medicine Strategic Plan, even in the context of the human subjects research review, contained nothing whatsoever about research ethics. The FCC and SRC could draft an appendix to the Strategic Plan addressing research ethics.

Professor Cohen said he hopes the discussion at the Faculty Senate meeting focuses on a better understanding of the problems uncovered by the external review panel, next steps for remediating the situation in a systemic policy way, and not get into the weeds. Professor Campbell said it is his impression that there are countervailing views about the facts of the Markingson case, and people may have already decided what the facts are whether they have read the report or not.

This institution, in Professor Gardner's opinion, believes that processes are more important than content on the assumption that processes will solve the issues. The key to the discussion will be to make it about the resolution and the external review committee's report and not about going backwards and looking for scapegoats because that would not be productive.

In preparation for the March 6 Faculty Senate agenda, Professor Ropers-Huilman asked members to approve the agenda, which she reiterated, will be devoted to a discussion about the report of the external review team regarding the University's Human Subjects Protection Program. Members unanimously approved the agenda.

Professor Ropers-Huilman said she believes Professor Wyman's question about the role of the FCC related to this issue is a good one. This needs to be an ongoing conversation. Professor Wyman said this issue presents a wonderful opportunity for the University and faculty to help craft best practices to help faculty to be efficient in their research while protecting human subjects. The FCC needs to be involved and consulted with as best practices are being developed.

In addition to inviting Professor Oakes as previously mentioned, Professor Durfee suggested inviting Professor Sue Berry, chair, IRB Executive Committee, as well as Debbie Dykhuis, executive director, Human Research Protection Program, to the same discussion.

What is the role of Vice President for Health Sciences and Dean of the Medical School Brooks Jackson and Academic Health Center Associate Vice President for Research

Tucker LeBien in this matter, asked Professor Bearinger? Professor Durfee said he knows that Dr. Jackson will attend the meeting, but is not sure about Dr. LeBien.

Professor Gardner requested inviting Vice President for Research Brian Herman to periodically meet with the FCC to talk about policy matters that will have an impact on the institution. The FCC does not talk with Vice President Herman on a regular basis like they do Provost Hanson and President Kaler, and, it should, particularly given the institution's mission. Professor Krichbaum added that Dr. Jackson should also be invited to meet with the FCC. Professor von Dassow said besides inviting senior administrators, the FCC should invite people with different perspectives on the issues being discussed.

7. **Adjournment:** Hearing no further business, Professors Ropers-Huilman adjourned the meeting.

Renee Dempsey
University Senate