Academic Freedom and Tenure Committee (AF&T)
January 24, 2020
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:** Welcome and Introductions; Discussion of University of Illinois, Urbana-Champaign, Committee on Faculty Sexual Misconduct Report; Update from the President's Initiative to Prevent Sexual Misconduct Advisory Committee]

PRESENT: Jessica Larson (chair), Brian Bix, Hon Ki Cheung, Nicholas Fischer, Holley Locher, Gopalan Nadathur, Yuichiro Onishi, Gary Peter, Karin Quick, Rebecca Ropers, Catarina Saiote, Rachna Shah, Clifford Steer, Timothy Wiedmann

REGRETS: Bruno Chaouat, Kristin Hickman, George Trachte

GUESTS: Phil Buhlmann, professor, College of Science and Engineering, Karen Miksch, professor, College of Education and Human Development, Sara Veblen-Mortenson, program manager, School of Public Health

OTHERS: Sumanth Gopinath, acting president, American Association of University Professors (AAUP), University of Minnesota Twin Cities chapter

1. Welcome and Introductions
Professor Jessica Larson, chair, welcomed committee members and began the meeting.

2. Discussion of University of Illinois, Urbana-Champaign, Committee on Faculty Sexual Misconduct Report
Larson invited committee members to share their comments on the University of Illinois, Urbana-Champaign, Committee on Faculty Sexual Misconduct Report. She also referenced a New York Times article, shared by committee member Rachna Shah, regarding a professor at Dartmouth College who was named in a sexual misconduct lawsuit against the college (as someone who condoned and hid the behavior of colleagues, but not an alleged perpetrator himself) and ended up taking his life. Larson made the point that if those who are leveling misconduct allegations are willing to include faculty members for not reporting misconduct, no one is immune to possible recrimination.

Yuichiro Onishi said he appreciated how methodically the report addressed the issue; first by defining sexual misconduct, and then presenting an expanded version of the policy with careful attention paid to the language used. Larson agreed and said the language provided by the American Association of University Professors (AAUP) was the clearest language she had seen on the issue of sexual misconduct (see page 44 of the report).

Rebecca Ropers, vice provost for faculty and academic affairs, Office of the Executive Vice President and Provost, said she appreciates that the University of Minnesota's Equal Opportunity and Affirmative Action (EOAA) office has recently ramped up its efforts, and wonders if there would be more forward momentum if the EOAA had more resources to enact recent changes to its policies and procedures.

Timothy Wiedmann said he thought it was important to carefully evaluate individual situations, and to let faculty know that sanctions Could escalate rapidly with repeated, or accusations of repeated, offenses.

A discussion followed as to what is currently in place at the University to encourage respectful, positive, academic environments and how to improve efforts for incoming faculty and staff. Ropers said that the message delivered at new faculty orientation sessions is that new faculty should not only strive to create a respectful working environment, but should *expect to experience* such an environment as well. Ropers also noted that faculty and staff members are required to complete an online training titled *Preventing and Responding To Sexual Misconduct.* The training is ongoing for new employees and they must complete the training within 30 days of their date of hire.

Larson asked committee members if they felt confident in their ability to explain the sanctioning process to colleagues. Committee members agreed that they felt confident in being able to direct colleagues to the appropriate person or people for their situation.

Larson then outlined what she understood the sanctioning process to be, and expressed concern that ,having only the faculty member's dean make the final decision and impose sanctions felt problematic to her. She invited the committee to discuss the idea of having a panel of decision makers, which could alleviate some of the pressure a departmental dean might feel.

Ropers said she is interested in exploring that idea. She added that the current procedure allows for a meeting with the dean and the supervisor or chair of the person being investigated, along with human resources representatives, in which the parties have a chance to talk and consult prior to the dean making a final decision. She added that President Joan Gabel asked the director of the EOAA, Tina Marisam, to build accountability mechanisms into the process to ensure that the sanctions that are decided upon are actually enacted.

Larson asked if there is a protocol for sharing sanctioning information with the faculty and staff in a unit where sanctions have been imposed and when the misconduct issue has been resolved. Ropers said that in some cases, EOAA develops a communication plan for the unit. She added that reintegration of an accused party back into their unit or department is being widely discussed at this University as well as nationally, as other institutions grapple with similar problems.

Wiedemann asked Ropers why a description of the sanctions imposed in an individual case are not made part of public record. She explained that the letter of discipline can be requested and made public, but that up until the time discipline is imposed, the information is part of a personnel record and is therefore private.

Rachna Shah recommended that putting the procedure into a flow chart with clearly definable decision points might make it easier to understand and follow. Ropers pointed out that the Faculty Consultative Committee (FCC) has encouraged the EOAA to develop clearer guidelines, and the EOAA has developed Recommendations for Responsive Action.

Shah then asked if there are mechanisms in place at the University to distinguish perpetrators from those who may be accused of being involved simply because they are in the same unit.

A robust discussion followed regarding who should be held responsible if a faculty member in a department is found to have engaged in sexual misconduct. Is a dean responsible because they did not discharge their responsibility of managing a department? Is someone who witnessed the behavior but said nothing in fear of retaliation responsible? Can and should these people be implicated? Ropers said these questions are compelling her to consider the validity of a sanctioning team, rather than a single, departmental administrator who makes the sanctioning decision.

Holley Locher asked Ropers if there is any precedent of administrators meeting with affected units and gathering information on what did and did not work well in the process. Ropers said there have been general discussions, but none as targeted as Locher proposes.

Larson added that it is important to provide direction for a unit, post-sanctioning process, to assist it in dealing with media coverage that may exacerbate the seriousness of the situation, potentially turning good students and faculty away from the unit.

Committee members discussed a number of topics that need additional consideration:

- If an accused faculty member has done what was required in the sanctions, how does a unit work toward reintegrating that person?
- Students are having a much more potent voice in these matters; even if a dean and a unit are trying to reintegrate a sanctioned faculty member, students can refuse to take the faculty member's classes or work in their lab, which has implications for merit among other things.
- Students in the Minnesota Student Association (MSA) are advocating for safe transfer legislation which puts a notation on a student's transcript indicating that the student has previously been suspended or expelled for sexual misconduct.
- How would sanctions and reintegration affect the faculty member's tenure track, professional reputation, etc.

3. Update from the President's Initiative to Prevent Sexual Misconduct Advisory Committee

Next, Larson introduced members of the President's Initiative to Prevent Sexual Misconduct (PIPSM) Advisory Committee; Phil Buhlmann, professor, College of Science and Engineering, Karen Miksch, professor, College of Education and Human Development, and Sara Veblen-Mortenson, program manager, School of Public Health. Miksch gave a brief history of her involvement on the advisory committee, and noted that under President Gabel, she is now the

co-chair of PIPSM which means she co-chairs both the steering and advisory committees. Miksch shared information about the current structure of PIPSM:

- Currently housed in the Office of Human Resources
- Companion initiatives on each of the system campuses
- Institutional Responsibility and Accountability Subcommittee - co-chaired by Phil Buhlmann and Amanda Termuhlen
- Department Development Subcommittee - co-chaired by Rebecca Ropers and Chris Uggen
- Other subcommittees including the Evaluation Committee, Student Education and Engagement
- Required faculty and staff training

Miksch added that another training program is being developed that will broaden the scope of the training to include preventing other forms of discrimination and harassment along with sexual misconduct.

Miksch next explained findings from the Faculty/Staff Sexual Misconduct Prevention Training Pre and Post Survey Data (see slides four and five).

- Of the six types of sexual misconduct outlined in the survey (lewd and offensive jokes, repeatedly being asked out even after saying no, groping and unwanted touching, quid pro quo harassment, sexual assault, rape):
    - 29.7% of respondents reported having experienced one of these six types of misconduct
    - 5.8% of respondents reported having experienced one of the latter four types of misconduct
    - When looking at the prevalence data for people who identify as women, the rate goes up to one in three respondents reporting having experienced sexual misconduct within the last five years while working at the University
- One in four undergraduate students reported having been sexually assaulted since they enrolled at the University.
- Almost 9% of graduate students has reported experiencing sexual harassment since enrolling at the University.
- Transgender, queer, and gender non-confirming populations; disabled students, staff and faculty; women of color; and immigrant groups all reported higher rates of experiencing sexual misconduct which mirrors what is seen in the national data and prevention community. Members of these groups are viewed, in a power dynamic, as having less power and are considered vulnerable.

Miksch said that PIPSM's work is very focused on prevention efforts in high-risk categories, while at the same time, learning from members of these communities what they would like to see in PIPSM's prevention efforts.

Miksch added that positive outcomes from the Faculty/Staff Sexual Misconduct Prevention Training Pre and Post Survey include:

- Much higher knowledge of what sexual misconduct is after taking the training
- Increased knowledge about Title IX and the correct procedures to follow for reporting sexual misconduct situations
- Better knowledge about available confidential services to use in situations where sexual misconduct is happening or is suspected

Survey data indicated two areas where respondents have less confidence in the University:
- Ability to prevent retaliation
- Ability to respond properly and not ignore or minimize sexual misconduct

Miksch next referenced a National Academies of Science, Engineering, and Medicine (NASEM) report titled "*Sexual Harassment of Women - Climate, Culture, and Consequence*" in which the author states that the organizational climate of an institution is the best predictor of whether or not tacit acceptance regarding sexual harassment will be the norm at the institution.

Miksch then outlined three indicators of an unhealthy work climate listed in the report:
- Fear of retaliation or perception of retaliation
- Underconfidence that the University will react appropriately
- Processes that are unclear and not transparent

The relevance of this information for the AF&T, Miksche added, is that fear of retaliation can undermine academic freedom. It is important for University members to know that there are ways to anonymously report actual or suspected sexual misconduct, she explained. Anonymous reporting could be particularly beneficial, Miksch said, for graduate students, post doctoral students, P&A staff, non-tenured faculty, and members of small academic units. The NASEM report also recommends having multiple advisors for professional and graduate students, rather than a single advisor, which may alter the power dynamic in these situations, Miksch noted.

After a discussion regarding where language regarding sexual misconduct and sanctioning procedures should reside, Ropers said the University will need to clarify whether to take a unit stance or an institutional stance on these matters. Miksch noted that the Board of Regents Policy: *Faculty Tenure* has strong language in its tenure regulations stating faculty *can* be disciplined for sexual misconduct. She added that the fact that few people are aware of this may contribute to their feelings that the University will not do anything in the face of retaliation nor will it respond properly in cases of reported sexual misconduct.

Next Phil Buhlmann, co-chair of the Institutional Responsibility and Accountability Subcommittee of PIPSM and a University of Minnesota representative for the NASEM Action Collaborative on Preventing Sexual Harassment in Higher Education, shared information about his work with these committees. He noted that, by participating in national conferences on sexual misconduct and sanctioning, he has learned that:
- Many institutions of higher learning are working to prevent sexual misconduct and sexual violence on their campuses.
- As there are numerous levels and types of sexual misconduct, sanctioning needs to move beyond the binary level (encompassing only two views: ignoring that misconduct is

taking place and terminating the person accused of misconduct) and include varying levels of sanctions.
- Clearer sanctioning documentation is needed and Buhlmann envisions sanctioning guidelines somewhat akin to federal or state sentencing guidelines that set out uniform sentencing policies for persons tried in court. The EOAA has created its Recommendations for Responsive Action and Buhlmann finds this to be an excellent first step.
- Clear documentation and guidance regarding reintegration of the victim, alleged perpetrator (if not terminated), and unit colleagues is vital.
- There is evidence of underreporting incidences of sexual misconduct as victims fear that:
    - By reporting, they will ruin the career of the person they are reporting
    - As a victim, they have already been through enough trauma and are concerned that reporting would exacerbate an already difficult situation

Mikshe shared with committee members that PIPSM is looking to AF&T for guidance. Committee members discussed how best to share their recommendations:

- Have a panel outside the unit make sanctioning decisions.
- Create understanding around the notion that sanctioning may vary from department to department in order to align with varying department cultures.
- Procedural guidelines could provide recommendations for sanctions, and keeping it out of the departmental 7-12 documents feels appropriate to committee members.
- Find consensus around at least the boundaries of what sexual misconduct is, understanding that there are many forms it can take.
- Continue to support the work of making sanctioning procedures more transparent, more easily understood, and more widely known.

In the interest of time, Larson thanked the guests and adjourned the meeting.

Geanette Poole
University Senate Office