

Faculty Consultative Committee (FCC)
November 7, 2019
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: Discuss Results of Spring 2019 Institute for Advanced Study Campus Forums (*Values, Governance, and Budget: Ideas for the Incoming President*); Office for Equal Opportunity and Affirmative Action's Recommendations for Responsive Action; Miscellaneous Committee Business]

PRESENT: Amy Pittenger (chair), Mark Bee, Sheri Breen, Colleen Flaherty Manchester, Rhonda Franklin, Michael Kyba, Lynn Lukkas, Peggy Nelson, Rob Blair, John Deen, Les Drewes, Frank Gigler, Jennifer Goodnough, Jessica Larson, Julie Olson, Donna Spannaus-Martin, Clifford Steer, Carol Chomsky

REGRETS: Phil Buhlmann (vice chair), Tabitha Grier-Reed, Ned Patterson

GUESTS: Professor Sumanth Gopinath; Professor Jennifer Gunn, director, Institute for Advanced Study; Tina Marisam, director and Title IX coordinator, Office of Equal Opportunity and Affirmative Action

OTHERS ATTENDING: Molly Dingel (UMR)

1. Discuss results of spring 2019 Institute for Advanced Study campus forums (*Values, Governance, and Budget: Ideas for the Incoming President*): Professor Pittenger convened the meeting, and welcomed Professor Sumanth Gopinath and Professor Jennifer Gunn, director, Institute for Advanced Study (IAS). She noted that Professors Gopinath and Gunn were central to the forums that were held last spring, which were intended to help inform President Gabel about issues facing the University. The purpose of today's discussion, said Professor Pittenger, is to revisit ideas that were generated in the forums and to see how this information can best be used going forward.

Professor Gunn began by distributing a brief summary of the core themes that came out of the three forums. Forum attendees, explained Professor Gunn, were asked to think in terms of ideas for the new president, opportunities as well as questions/concerns. Professor Gunn said that Professor Gopinath led the first forum on values, which was intended to underlie and frame the other two forums on governance and budget.

Professor Gunn turned members' attention to the handout and highlighted the themes that echoed across the three forums. By far the comment that came up the most throughout the forums was the importance of open communication and transparency. Additional themes included:

- The need to be inclusive of diverse voices, including ones that do not always agree.

- The need to reinforce and create structures that promote collaboration rather than competition among units and community constituencies, and to question structures (including the Responsibility Center Management - RCM - budget model) that impede collaboration and cooperation.
- The need for a culture change. In order to accomplish this, it will be necessary to win over people's hearts and minds, both internally and externally, particularly as it relates to the University's relationship with the State of Minnesota. A concrete suggestion was made that the University use storytelling rather than relying on legalistic approaches when talking about the work it does.
- The need to articulate the University's values and to use them to guide decision-making. The University's values should be clearly reflected in its priorities, budget, assessment policies, performance and relationships.

Professor Gunn said while recognizing that governance is advisory to the administration, the question of how governance can get ahead of bigger issues and provide input on decisions before they are made arose at the governance forum. Professor Gunn shared some of the ideas that were discussed at the forum and the committee brainstormed others, and these included:

- Work to robustly recruit people to serve on governance committees.
- Recognize service in governance as valued in annual reviews.
- Bring issues raised in governance meetings back to the units and solicit input at the local level.
- Define/clarify the role of the President as chair of the Senate, which is to essentially run the meeting, but make it clear that it is the faculty, staff and students who set the agendas.
- Strengthen collegiate governance and do more to tie it in with University governance.
- Do more to engage senators, e.g., discussions on important issues, who often seem disengaged. Many senators feel decisions are already made by the time they get to the Senate and may not realize how much has been discussed/vetted by governance at the committee level.
- Balance the notion of engaging people around issues with consulting on every single decision at every level.
- Consider whether there should be a faculty member on the Board of Regents.
- Have faculty committee chairs attend Board of Regents committee meetings.
- Improve upon messaging by including information about the consultation process that was used when administrative decisions are made and/or when initiatives are launched.
- Identify the substantive decisions/issues that are likely to generate the most concern/interest and message those broadly rather than messaging everything, which leads to information overload.
- Ensure new faculty are given information about governance.
- Identify other creative ways to get information out aside from email given people get so many messages, which they tend to ignore/delete.
- Take the time to review with senators the *Responsibilities of University Senators* document rather than simply presenting it for information at a Senate meeting. Then, actually have a conversation with senators about how to make governance more robust.
- Take advantage of having a new administration and use it as an opportunity to make governance more robust.

- Support and fund collegiate governance.
- Review the RCM budget model. Recognize that while no budget model is or ever will be perfect, it may be time to make adjustments to the current model, which sets up competition instead of collaboration.
- Explore whether decentralization is an impediment to implementing the University's values.
- Conduct an external review of the University's governance model.
- Include unionized faculty and staff in governance at some level, recognizing there are legal obstacles. Consider putting the governance structure in the union contracts.

In light of time, Professor Pittenger thanked Professors Gopinath and Gunn for a good discussion. In terms of next steps, Professor Pittenger suggested reconvening in the near future and prioritizing the ideas that were discussed today.

2. Office of Equal Opportunity and Affirmative Action's recommendations for responsive action: Professor Pittenger welcomed Tina Marisam, director and Title IX coordinator, Office of Equal Opportunity and Affirmative Action, to the meeting. To begin, Ms. Marisam distributed copies of her PowerPoint presentation. She explained that she was invited to attend today's meeting to talk about how EOAA approaches the recommendations it makes about what responsive actions should be taken when a faculty member has engaged in sexual misconduct that violates University policy.

EOAA's main role, said Ms. Marisam, is to respond to concerns of discrimination and harassment, including sexual misconduct as well as retaliation. The office uses two main strategies for responding to these concerns 1) informal problem solving processes, and 2) a formal investigation to determine whether University policy has been violated. The vast majority of the reports that EOAA receives are handled through informal problem solving processes, because, for example, it is conduct that may have caused some harm and is concerning, but did not violate University policy. Additionally, informal problem solving processes are used when EOAA receives anonymous reports or when there is a complainant who does not want to be identified or who provides very little information. During the informal problem solving process, EOAA reaches out to the person about whom the complaint was made, lets him/her know a complaint was received, and gives him/her information about the impact on the person who reported the issue. Additionally, EOAA will point the alleged perpetrator to any relevant policies and let him/her know about support/educational resources that are available. Often either EOAA or an academic leader (dean or department head) in consultation with EOAA will coach the individual on appropriate conduct and expectations. In cases involving more concerning conduct, a letter is often drafted to outline conduct expectations going forward. The informal problem solving process also involves following up with the complainant to let the complainant know that the concern has been addressed, ensure that the concerning behavior has stopped, and discuss whether the complainant requires any accommodations

Generally speaking, EOAA recommends responsive action in both lower level and higher level conduct cases, but disciplinary action is only taken in formal investigation cases resulting in a

finding that a policy was violated. The purpose of the EOAA recommendations for responsive action include:

- Holding the respondent accountable in a way that communicates the seriousness of their conduct.
- Preventing further misconduct from occurring.
- Addressing the harm caused to the complainant and the community.
- Fostering an organizational climate where community members perceive that discrimination and sexual misconduct is not tolerated, that reports of this conduct will be taken seriously, and that retaliation for reporting this conduct is not permitted.

Professor Flaherty Manchester asked whether EOAA continues to make recommendations for responsive action as cases unfold. Is the EOAA process iterative? Ms. Marisam said that EOAA is learning and refining its processes with every case. In the past, EOAA made recommendations for responsive action, but it was ultimately left up to the academic or administrative unit to decide which recommendations to implement. Increasingly, over the past few years, academic or administrative units are interested in getting help and guidance from EOAA in order to respond appropriately and effectively. EOAA has developed documents to provide guidance.

Professor Deen asked if EOAA gets involved in cases involving patients, research subjects or the general public. Yes, said Ms. Marisam, EOAA gets involved whenever there is a sexual misconduct or discrimination allegation on campus or when a member of the University community is engaged in this kind of behavior off campus but it creates a hostile environment on campus, poses a threat to the safety on campus, or interferes with the ability of a member of the University to perform their job. Ms. Marisam added that if someone is acting within the scope of their employment, the case will be handled under University policy.

Ms. Marisam outlined the principles underlying EOAA's recommendations for responsive action:

- Effective
- Proportional to the seriousness of the conduct
- Consistent across units, but still allowing for differences based on the context and any compelling justification in individual cases.

What is the reference point for the EOAA recommendation, asked Professor Franklin? Is it relative to the University or something bigger than the University? Would the responsive action be different in an academic setting versus a business setting? Ms. Marisam said EOAA tries to make similar recommendations in terms of seriousness for similar conduct regardless of a person's employment class. EOAA is looking to meet its goals, e.g., what level of disciplinary action is enough to make sure that the person who engaged in the conduct will not do it again, and that it is proportional to the seriousness of the conduct.

Next, Ms. Marisam outlined the types of EOAA recommendations for responsive action:

- Disciplinary measures
- Rehabilitative measures
- Restorative measures

- Monitoring measures

Disciplinary measures can range from a formal disciplinary letter to unpaid suspension from employment, loss of title, loss of benefits, reduction in pay and termination of employment. The seriousness of the particular case will determine the disciplinary measure that is taken.

What is the relationship between the tenure code, asked Professor Lukkas, and EOAA's processes? In her opinion, she believes there is a misunderstanding about what behaviors the tenure code may or may not protect. Ms. Marisam said while she is not an expert on the tenure code, she knows that it explicitly prohibits sexual harassment. So, a sexual harassment policy violation would be grounds for discipline under the tenure code. The interesting thing about the tenure code, said Ms. Marisam, has to do with what information can go public. Under Minnesota law, very little information goes public, e.g., if there was a complaint and if it is active or closed. Until discipline is imposed, nothing is public. However, once discipline is imposed, quite a bit of information becomes public, e.g., what happened and the discipline that was imposed. Discipline is imposed after the process makes its way through the process mandated by the tenure code. So, in a case where a faculty member was found to have violated the sexual misconduct policy, he/she can resign before discipline is imposed, and nothing about the case can be disclosed.

Professor Drewes asked whether a case involving a University employee and his/her boy/girlfriend would be covered under University policy. In general, this scenario would not be covered by the policy unless it occurred on campus, occurred within the scope of the employee's employment, or the person who engaged in the behavior was or could be a threat to the University's operations or individuals on campus.

Professor Drewes asked about a faculty member who is either currently or formerly a University employee and who is applying for a job at another institution. Can the institution that the person is applying to conduct a background check and find out if the applicant has ever been investigated? How does Minnesota handle such a situation? According to Ms. Marisam, it depends on the state specific privacy laws. Under Minnesota law, the University would not be able to share information with the inquiring institution unless the information is considered public. This means if the University had conducted an investigation, made a finding, and the person resigned before discipline was imposed, this information could not be shared with the other institution unless the employee had signed a written consent allowing the University to release this information. There is one university in the University of California system, said Ms. Marisam, that started a pilot program last year requiring all faculty finalists to sign such a consent form.

How does the University handle situations involving faculty, staff or students that happen off-campus and the perpetrator is not a University employee, asked Professor Lukkas? Ms. Marisam said the University still has a responsibility to take steps to support this person and do whatever it can to prevent it from happening again. The University is limited in what it can do in these circumstances because it does not have control over the person who engaged in the conduct.

How are system campus cases handled, asked Professor Goodnough? Ms. Marisam explained that EOAA has staff members on the Twin Cities and Duluth campuses. Because Morris, Crookston and Rochester have staff members who wear a lot of different hats, they often ask the Twin Cities and Duluth for help, which these offices are happy to provide. System campuses that need help, however, need to ask for it.

Professor Franklin asked about cases where there are no findings of wrongdoing, and wondered if EOAA would ever be willing to put forward a statement on behalf of a person who was wrongly accused. EOAA, said Ms. Marisam, is able to tell people their findings if they are in the 'need to know' category. She added that she does not recall EOAA having ever issued such a statement. While in some cases it may be an option, EOAA would have to think about the context and all the parties involved, including the complainant and respondent. Alternatively, department heads have been known to send general messages about their commitment to preventing sexual misconduct and the processes that are followed. Professor Chomsky noted that when there is not a finding of wrongdoing, that does not mean there was no problematic conduct, only that the allegations were not proved sufficiently to determine that the action warrants discipline.

For faculty who are not employees of the University, e.g., Fairview employees, USDA employees, who is responsible for discipline issues, asked Professor Deen? According to Ms. Marisam, third parties serving in instructional roles at the University are subject to our sexual misconduct policy, and the University would respond to those concerns. Professor Flaherty Manchester asked about the distinction between the informal problem solving processes used by EOAA and the formal investigation. The main question that EOAA uses to determine what strategy it will use is - would the report, if substantiated, violate policy? EOAA would not conduct a formal investigation if the conduct as alleged would not be a policy violation.

Professor Olson proposed a scenario whereby a University of Minnesota faculty member goes to a conference (work event) and the misconduct occurs there. Upon his/her return to the University of Minnesota, the faculty member decides to report the incident to EOAA. In this situation, would the University reach out to the other institution and report the alleged incident? EOAA would definitely offer support and accommodations to the University of Minnesota faculty member in this situation, said Ms. Marisam, and if the faculty member wanted to pursue the matter further, EOAA would facilitate the filing of a complaint at the other institution.

Professor Blair asked whether EOAA has considered creating something similar to the [Red Folder](#) (a resource to help faculty recognize student distress/mental health indicators), but with a focus on sexual misconduct. Ms. Marisam said she is unaware of the Red Folder but noted that EOAA has a [document](#) that sounds similar, which is specific to sexual misconduct.

Professor Bee requested Ms. Marisam speak a little bit about discipline decisions. Ms. Marisam turned members' attention to her PowerPoint slide *Decision on Discipline*. In academic units, EOAA will make its recommendations and will send them to the dean, human resources representative(s), and generally to the department head unless there would be a conflict of interest in doing so. After that, a meeting is set up with the appropriate parties to talk through the

case and recommendations, and answer any questions. The dean is the decision-maker when it comes to what responsive actions will be taken. If the dean decides to take responsive actions that are either more or less severe than what EOAA recommended, then that decision goes to the provost for final approval. Professor Bee said how he interprets the decision-making process is that it is not really the dean's decision about a responsive action, but a rubber stamp on EOAA's recommendations. Ms. Marisam explained that the provision to have the dean be the decision-maker was added within the last year, in part, to clarify who has the authority to make discipline decisions and to give accountability for these decisions to the dean. As she recalls, since this provision was put in place, no cases have gone to the provost. She added that she does not believe the deans are simply a rubber stamp on EOAA's recommendations because reasonable minds can differ. The reason the provost has a role is to make sure that whatever decision is made is within the realm of reasonableness and consistent with other decisions. Ms. Marisam said she could definitely envision a dean making a different decision and the provost approving it.

This issue, said Professor Pittenger, is at the heart of other issues the FCC is grappling with. That said, she suggested EOAA develop a list of possible disciplinary sanctions (sanctioning guidelines) for various offenses to help the deans interpret EOAA's recommendations in a way that would result in proportionate and consistent responses. Without such guidelines, it makes it difficult for the University to respond to people outside of academia regarding faculty disciplinary actions that it takes. Ms. Marisam then shared examples of some disciplinary recommendations. In terms of sanctioning guidelines, it would be difficult to produce a useful document because sexual misconduct covers a wide range of conduct, where appropriate discipline can range from coaching or a disciplinary letter to termination. In addition, there is a danger that following guidelines could result in discipline that is disproportionately severe or minimal for the particular misconduct at issue, which would be unfair and could deter future reporting. For example, some complainants may want a respondent fired, but others do not want to report because they are afraid the person may lose their job or have their life ruined. Making sure that discipline is proportionate to the misconduct is not only fair, but also important to promote reporting.

Professor Chomsky reminded those present that if there is a recommendation for suspension or termination of a faculty member, the dean has to bring the matter to the tenured faculty in the unit for a decision. She also noted that there is an archive of Judicial Committee cases outlining the outcome of cases, with particular facts removed so an individual cannot be identified from a summary.. These summaries give Judicial Committee members something to go on for precedent when making decisions on future cases. Would there be a way for EOAA to do something similar in terms of the disciplinary actions that were taken in different cases? This would be valuable because there is a need to figure out what is proportional, what has been done before, etc. Ms. Marisam said she liked this idea because transparency around sexual misconduct matters is important. Professor Pittenger added that even if the examples were hypothetical that would be fine too. It would be helpful to see the recommended sanction for a particular situation. Ms. Marisam said this is something EOAA could easily do.

Professor Deen asked whether faculty on annually renewable contracts who have been accused of sexual misconduct have any protection from not having their contracts renewed, which is different than firing but still a way of getting rid of someone. Ms. Marisam said while she could see there may be a temptation to do this, EOAA would strongly advise against it. There is a policy that sets forth in sexual misconduct cases that people get procedural protections before adverse actions can be taken in a person's employment. Professor Deen added that most contract non-renewals are stated to be for financial expediency, whatever the true reason may be.

Professor Franklin said she likes the idea of having different scenarios, particularly for the person who wants to report something. It would be nice for potential complainants to know what to expect if they decide to take action. Professor Pittenger agreed and said the University has a problem when it comes to explaining how faculty govern themselves.

Professor Lukkas said in this day and age with heavy social media use and information quickly going viral, how does EOAA work with departments/units to heal those communities that have been impacted. Ms. Marisam acknowledged that the University currently does not have a lot of tools and resources in this area. Some departments/units have held focus groups, town hall meetings, invited EOAA to meetings, etc. in an effort to build trust. The University's academic leaders know that more resources are needed, e.g., restorative justice and coaching resources. She is hopeful that the University will make progress in this area over the next few years.

Professor Pittenger asked Ms. Marisam about her thoughts on the [University of Illinois at Urbana-Champaign's Committee on Faculty Sexual Misconduct Report and Recommendations](#). Ms. Marisam said she really liked the document and thought it was right on target. There were a lot of good ideas in the report, some of which she plans to bring to her team. The report is a great framework and conversation starter.

Professor Pittenger thanked Ms. Marisam for her time and a good conversation. She encouraged Ms. Marisam to look into developing scenarios as discussed today. Ms. Marisam agreed that the scenarios are a great idea and her office will do its best to come up with something.

3. Announcements: Given the conversation with Professors Gopinath and Gunn ended somewhat abruptly, said Professor Pittenger, she would like to set aside time on the next FCC agenda to talk about next steps. Professor Chomsky suggested that each of the Senate committee chairs who serve ex officio on the FCC should bring this to their committees for input as well.

Professor Bee asked about the status of the November 14 fall forum (Our University History: Understand, Acknowledge, Engage), and whether the Provost's Office has advertised it. Professor Pittenger said the advertising has not been particularly extensive. She added that she heard that the forum announcement was recently in *The Brief* and that it is being advertised on social media. Professor Pittenger said she plans to mention the forum in her report at today's Senate meeting.

4. Adjournment: Hearing no further business, Professor Pittenger adjourned the meeting.

Renee Dempsey
University Senate Office