

# FACULTY SENATE

Minutes of November 16, 1999 - (approved)

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The Senate met at 2:00 PM on November 16, 1999 in the Center for Tomorrow to consider the following agenda:

1. [Approval of the minutes of October 5, 1999](#)
2. [Report of the Chair](#)
3. [Report of the President/Provost](#)
4. [Second reading on Assessment of Educational Programs](#)
5. [University Policy on Sexual Harassment](#)
6. [Report on the Faculty Senate meeting in Potsdam](#)
7. [Old/New Business](#)

## **Item 1: Approval of the minutes of October 5, 1999**

The minutes of October 5, 1999 were approved.

## **Item 2: Report of the President/Provost**

The President asked that the Faculty Senate Budget Priorities Committee report to the Faculty Senate at the first opportunity. The Committee has had several briefings and is current with the budget. The Chair responded that the Committee is scheduled for the December 7, 1999 Faculty Senate meeting. The President then noted that articles in the *Reporter* have been accurate in reporting on the complex budget situation; a final article should appear in the November 18 *Reporter*.

## **Item 3: University Policy on Sexual Harassment**

The President noted that the Policy on Sexual Harassment has been under discussion for about two years with several drafts being prepared during this last year. Professors Finley and Munger were the primary drafters, aided and supported by Ms. Stewart, Director of the Equity, Diversity and Affirmative Action Administration, and members of the University Committee on Affirmative Action. Mr. Lewis Rosenthal, Associate Counsel in the SUNY Office of the University Counsel, invested much time in reviewing the various drafts and negotiating with the President who allowed himself a busman's holiday with the Policy.

Mr. Rosenthal introduced the Policy. Throughout the revision process the underlying theme of the work has been to give the University a workable statement and a policy and procedures to address issues of sexual harassment. The document balances the rights of charged and charging persons; it uses procedures that are common within SUNY, for example a tripartite investigatory group to review cases. The United States Supreme Court has recently said that the existence of a workable, disseminated policy which the complainant consciously chooses not to use is an affirmative defense for an employer in a case of sexual harassment. This Policy is important for the University, first, because it is the right thing to do, and second because it protects the University from risk.

The Chair then opened the floor for discussion, noting that at the end of the discussion there will be a motion to receive and file the Policy for the record, and the minutes of the discussion will be transmitted to the University Affirmative Action Committee.

- have four comments (Professor Holstun)
  - the draft makes no mention of sexual harassment on the basis of sexual orientation which is one of the most important forms of sexual harassment facing the University
  - the draft (page 2, paragraph 5, sentence 1) says that "isolated instances, e.g., a sexual overture, comment or joke, ordinarily will not constitute sexual harassment unless the circumstances are egregious"; if a faculty member makes a sexual overture to a student under his supervision, that should be considered sexual harassment; believe the intent of this provision is to prevent the criminalization of all expressions of sexuality on campus, but the provision would better read: "isolated instances will not necessarily and automatically constitute sexual harassment"; this does not place a heavy burden of proof on the complainant

- there is dissonance between the provision (page 2, paragraph 5, sentence 2) which says: "Nor does such sexual behavior constitute harassment if it is welcomed (i.e., voluntary and consensual)" and the provision (page 1, paragraph 5, sentence 1) which says: "Certain behavior can be classified as sexual harassment even if a relationship appears voluntary in the sense that one was not coerced into participating. A central element in the definition of sexual harassment is that the behavior is unwelcome."
- the Provost, the Senior Vice President and the Vice President for Student Affairs control the selection of the standing committee from which the parties nominate three acceptable investigators; they then choose which of those nominees will represent of the parties; finally they are responsible for the disposition of the complaint; that is a lot of power to put in the hands of these three officials and leaves unprovided for a situation in which one of the three is a party
- in response to the questions: (Mr. Rosenthal)
  - the "isolated instances" language is taken from leading cases; the Supreme Court says that simple teasing, off-hand comments and isolated incidents, unless extremely serious, do not amount to discriminatory changes in the terms and conditions of employment
  - the "nor does such sexual behavior constitute harassment..." is boiler plate from policy and case law; if the overture is welcomed, Title 7 of the Civil Rights Act of 1964 is not triggered
  - the process of who and how investigators are selected is consistent with SUNY grievance procedures; in practice the President and his officers will be advised by the Affirmative Action Committee on the membership of the preselected panel and will not exercise direct control
- the two sentences of paragraph 5, page 2 should be in different paragraphs because they raise different issues; the first sentence on "isolated instances" raises a "de minimus" issue of whether it is desirable to trigger the procedure for the first instance of inappropriate behavior at a low level; the second sentence means that welcomed sexual behavior is not harassment; the two provisions are not related (President Greiner)
- removing the word "such" will help clarify the sentence (Professor Benenson)
- the sentence (page 2, paragraph 5) about welcomed sexual behavior needs to be looked at in relation to paragraph 5, page 1; teasing or making a sexual reference is different from making a sexual overture; you have not addressed the question about harassment because of sexual orientation (Professor Holstun)

- paragraph 2, page 2 says: "...sexual harassment may involve behavior by a person of either sex against a person of the same or opposite sex" (Mr. Rosenthal)
- harassment on the basis of sexual orientation, e.g., a straight harassing a gay, is not the same as harassment arising from sexual interest (Professor Holstun)
- harassment on the basis of sexual orientation would be covered not by this policy, but by the policy on sexual orientation (Mr. Rosenthal)
- grappling with the difference between sexual harassment and gender based discrimination; this policy is about sex not gender or sexual orientation (President Greiner)
- the policy has an educational component, recognizing the importance of prevention (Professor Acara)
- openly stating that isolated instances do not constitute sexual harassment could give encouragement to inappropriate behavior (Professor Sridhar)
- unrealistic to create a zero tolerance policy; the Supreme Court says that Title 7 is not meant to be a general civility code; to make it one would trivialize it; universities need an open climate for a range of expression (Mr. Rosenthal)
- may need to work on the language of the "isolated instances" provision (page 2, paragraph 5, sentence 1) to strike a proper balance between the need to discourage improper behavior and the need not to trivialize the policy (President Greiner)
- like Professor Holstun don't understand how to collate the provisions of page 1, paragraph 5, sentence 1 and page 2, paragraph 5, sentence 2; "voluntary" behavior is treated differently in the two provisions (Professor Conte)
- the first page is saying that the lack of criminal law coercion is not a defense to a complaint of sexual harassment if the behavior was unwelcomed though apparently voluntary; the second page says that a truly voluntary and consensual response to a sexual overture is a defense (Mr. Rosenthal)
- page 1, paragraph 5, sentence 1 says that certain behavior (but not all) can be classified as harassment even if it appears voluntary, whereas page 2, paragraph 5, sentence 2 identifies particular behaviors which do not fall under the umbrella of page 1, paragraph 5, sentence 1; as the provisions now appear in the Policy they are not contradictory; can't

locate provision that would cover one of the three officers being a party to a complaint of sexual harassment and the Policy needs to cover that contingency (Professor Schack)

- provision in an earlier draft said that if one of the three officers was a party his superior would perform the functions assigned, e.g. if the Provost were a party, the President would carry out the Provost's functions; the provision was removed to make the Policy more manageable (Mr. Rosenthal)
- since this is a campus based policy, the chain stops with the President; should re-instate the provision (President Greiner)
- why are advisors to the parties allowed but prohibited from addressing the investigatory panel (page 10, paragraph 6)? (Professor Benenson)
- prohibition is consistent with SUNY practice; if allow attorneys to appear, then the investigatory panel would need its own attorney to prevent the attorney from taking over the procedure (Mr. Rosenthal)
- there is no legal right to trial like procedures at every stage of an investigatory process; before sanctions are imposed at a formal grievance hearing or a court trial, these protections would come into play (President Greiner)
- the one year time period for filing a complaint (page 8, paragraph 1) is too short, especially if a freshman student is involved (Professor Gregg)
- the choice of one year is a balance between the needs of the complainant and the difficulty of investigating a several year old incident; there are multiple venues to which a complaint could be brought, offering different time limits; a federal claim could be brought within three years (Mr. Rosenthal)
- will develop interpretations of this Policy; for example, the one year time limit begins to run when the complainant is no longer under the supervision of the alleged harasser; does that mean the clock begins to run when the complainant is no longer taking a class from the alleged harasser or when the complainant is no longer taking classes in the department? (President Greiner)
- does the complainant have to establish that he suffered harm? (Professor Dryden)

- the harm element is not required; tangible detriment is required, e.g., the complainant gets a grade of D instead of a grade of A or is subjected to a hostile environment (Mr. Rosenthal)
- harm is presumed from an egregious incident; the Policy has to balance two separate interests, the internal need of the institution for civility and the need of the institution as a corporate body facing liability to provide itself with defenses; if have further thoughts on the Policy communicate with Ms. Stewart (President Greiner)

There was a motion (seconded) to receive and file the Policy and to transmit this discussion to the University Affirmative Action Committee. The motion passed unanimously.

#### **Item 4: Introduction of Professor Joseph Flynn**

The Chair introduced Professor Joseph Flynn, Chair of the SUNY Senate. Professor Flynn chaired the SUNY Senate Fair Employment Practices Committee so the issues raised in the discussion of the Sexual Harassment Policy were familiar to him. He noted that an important issue is whether tenure can be removed on grounds of insubordination if a faculty member refuses to participate in the investigatory process. He then praised UB's SUNY Senators and members of various SUNY Senate Committees. He thanked the UB Senate for its endorsement of the SUNY Senate's resolution of no confidence in the Board of Trustees. The SUNY Senate continues to monitor the Board's intrusion into the setting of curriculum. Professor Flynn is serving on the "small" search committee for a new Chancellor; the committee is working assiduously to bring the best-qualified person into SUNY.

#### **Item 5: Second reading of Resolution on Assessment of Educational Programs**

Professor Meacham, Chair of the Educational Programs and Policy Committee thanked the Senate for its helpful suggestions during the first reading of the resolution. The Senate asked for examples of assessment already being done at UB; EPPC asked informally for examples, not having the resources to do a systematic survey. Assessment is being done in the Educational Opportunity Program, in the College of Arts and Sciences which has a Pew Grant that required assessment of programs, in the

Schools of Architecture, Education, Nursing and Engineering. Predominantly it is the professional schools which are doing assessment because of accreditation requirements. Increasingly accrediting bodies for undergraduate education are also requiring assessment programs to be in place and producing change. At the first reading Professor Meacham stressed the difference between assessment (authoritative, critical analysis of a program) and evaluation (setting of value on a program in comparison with other programs) and tried to make clear that the resolution is about assessment, not evaluation. The suggestion was made to write into the resolution that the intent is to improve programs and student learning, not to compare programs, and the EPPC did so as paragraph 2 of the revised resolution. At its first reading the resolution contained first a call to the administration to provide leadership and resources for assessment and second a statement acknowledging faculty responsibility for assessment. The Senate suggested reversing the order of those two provisions to make clear that faculty has primary responsibility, and the EPPC did so, expanding the acknowledgement of faculty responsibility by adding the specific steps to be undertaken in assessment. The Senate pointed out that the resolution did not contain a statement of budgetary impact. The EPPC added a statement saying that resources to develop expertise will be needed at the start, but just outside the short run assessment will be a financial plus by improving the efficiency of programs and making them more competitive in grant getting.

The resolution was moved (seconded). The Chair called for discussion:

- when the administration is allocating resources, the assessments will be used to compare program; the resolution does not address this use of assessments (Professor Radnor)
- the Committee chose to keep the resolve as short as possible, but it does say that how assessment is done and what uses are made of the results need to be worked out cooperatively between the administration and the faculty; resource allocation is better done on the basis of objective data, and it is not unreasonable to use the results of assessment in that way (Professor Meacham)
- we are understaffed and this adds to the burden on faculty; how frequently would assessment be done? (Professor Campbell)
- sampling is a very important tool; a possible scenario would be to annually use \$100 of departmental funds to pay for several teams of two faculty to take six students each to

lunch at the Tiffin Room, with the faculty teams then comparing notes and writing a one page report; perhaps every fifth year a more serious effort would be undertaken with several hundred students surveyed; departments need to develop patterns of assessment that work for them (Professor Meacham)

- where is the trigger for assessing programs that cross unit lines, for example, assessment of Access '99 or UB 101? (Professor Adams-Volpe)
- resolution calls for assessment of all educational programs; to the extent that Access '99 is an educational program it would fall under the resolution; makes sense to assess areas in which the greatest amount of money is being spent and which impact on the greatest number of students; the resolution specifically mentions the general education component as requiring assessment; specific mechanisms will have to be worked out (Professor Meacham)
- external assessment, like that done by an accrediting agency, is more effective than internal assessment (Professor Sridhar)
- my first response is that accreditation used to focus on inputs, e.g., how many departmental faculty had Ph.D.'s, from what institutions, with how many publications, etc.; now accreditation focuses on outputs, e.g., what are the skills expected to be taught in a program and what is the evidence for a program's success, with graduation rates and class grades not acceptable evidence of skills learned; second response is that assessment is an important, personal tool for validating what one does as a teacher (Professor Meacham)
- most accrediting bodies require evidence of self-assessment before undertaking their own accreditation process (Professor Kalman)
- accrediting body makes its evaluation based on its own evidence, for example talking personally to students who are more likely to be candid with an outsider than with a faculty member they know (Professor Sridhar)

There was a vote on the resolution which carried.

## **Item 6: Report of the Faculty Senate Meeting in Potsdam**



Professor Adams-Volpe reported on the October SUNY Faculty Senate meeting. The Senate focused on two issues. First, without any faculty consultation or notification, SUNY released its *Policy Guidelines on the Consideration of Graduate Programs*. The *Policy* calls for graduate programs to be offered at the University Centers, with exceptions for the three "specialized" campuses. The *Policy* will make it more difficult for graduate programs to be approved at the four-year colleges. This prohibition is problematic in some areas. For example, given the requirement that all teachers acquire a Master's degree, many graduate education courses need to be offered in many places. The *Policy* also calls for some specialization among the four University Centers, requiring that programs "not unnecessarily duplicate resources."

The SUNY Faculty Senate also discussed issues arising from the mandated implementation of the General Education Curriculum by Fall 2000. Most campuses are very concerned about the implementation time line and the lack of implementation funding. The language and history requirements are of particular concern because they are not in place on many campuses. The language requirement is particularly frustrating in that significant resources will have to be found to support what seems an ineffective requirement of only one semester.

The Senate passed two resolutions related to the General Education Curriculum. The first urges each campus faculty governance body to review and approve/disapprove any significant alterations in its general education program occurring before September. The second resolution urges the Board of Trustees to provide funding for implementation and to extend the deadline for implementation.

There were questions from the floor:

- did the SUNY Faculty Senate oppose implementing the language requirement? (Professor DesForges)
- the Senate has expressed concern about the educational efficacy of a one semester language requirement (Professor Adams-Volpe)
- the SUNY Senate will neither endorse or condemn the General Education Requirement; the Senate takes the position that general education is a campus matter; the Senate is, however, asking campuses to consider whether any changes they make in general education are in the best interests of their students and reflect the best educational

research and to document changes; the chairs of history departments and foreign language departments have met with and expressed their concerns to Provost Salens, the Provosts of the 64 campuses have also met (Professor Flynn)

- UB Senate should encourage a serious language requirement, rather than doing away with any language requirement (Professor DesForges)
- how do the history chairs address the distinction the General Education Curriculum makes between western and other civilizations? (unidentified speaker)
- the Curriculum requires foreign language, American history, Western civilization, and non-Western civilization; the Provost's Advisory Taskforce shifted the paradigm from ten courses to ten learning outcomes; for example, could have one course that satisfied all ten of the Trustees' outcomes, or ten distinct courses that satisfy all the Trustees' outcomes and three times more learning outcomes specified by the campuses; campuses are taking different approaches to the Curriculum and this will cause great difficulty of articulation (Professor Flynn)
- is there evidence that the Trustees have examined the general education curriculums in place in SUNY and elsewhere, did Ms. DeRussey decide that order and discipline needed to be instilled, or were the Trustees trying to destroy general education in SUNY? (Professor Holstun)
- no evidence to the former and plenty of healthy speculation as to the latter (Professor Flynn)

### **Item 7: Report of the Chair**

The Chair referred the Senate to his written report distributed with the agenda. He added that the FSEC will discuss the Princeton Review evaluation of UB at its December 8 meeting, looking at the validity of its methodology. He then asked for questions:

- has been 6 months since the issue was brought to the Senate's attention; am keenly disappointed that we are only now getting organized; the Senate seems to be taking a "kill the critics" approach; methodology probably is flawed, but there may also be truth in the

report and we should be able to rationally address both the good and bad points of the evaluation; UB is fortunate that the *Buffalo News* hasn't picked up the story; is my experience that the Faculty Senate is reactive rather than proactive in responding to issues and should try to correct this (Professor Benenson)

- accept the criticism (Professor Nickerson)
- is any Senate Committee looking at the appearance of lecture notes from UB classes appearing on commercial web sites? (Professor Faran)
- not currently (Professor Nickerson)
- several institutions are trying to do something about this on the grounds of copyright infringement of intellectual property (Professor Adams-Volpe)

### **Item 8: Old/New Business**

Professor Zubrow expressed dismay that there had been no discussion of UB's budgetary situation at this meeting. The Chair responded that the Budget Priorities Committee, Senior Vice President Wagner and Vice Provost Sullivan will address the budget at the Senate's December 7 meeting. With the passage by the Board of Trustees of the SUNY budget we finally have firm figures to discuss.

At the Budget Priorities Committee meeting, Senior Vice President Wagner, using estimated figures, talked about the central budget cut of \$4.1 M and internal reductions. The Deans will have to deal with considerable reductions, using an all funds allocation methodology. There is variability in how the Deans communicate with their faculty, but they need to consult with them in order to be effective managers. On the administrative side there is a \$2 M budget cut.

The Budget Priorities Committee is also looking at the deficit in the College of Arts and Sciences. The Provost has figures for the Committee to look at, but it is not settled whether the Committee will be able to share those figures with the faculty. The Provost may not want publicity til he has met with the Chairs in the College.

Professor Schack added more detail. The Budget Allocation Process stipulates that while there is no new money to allocate, no one can get less money than before. SUNY, therefore, runs the allocation

formula, but then makes whole any institution that gets less than it got under the old formula, thus causing a shortfall which is spread out proportionally among the campuses. However, UB gets to keep its tuition revenue, but inflation and salaries aren't covered. Netted out this amounts to a \$5 M loss for UB. UB will allocate \$4.3 M in real cuts and \$1.1 M in absorbing inflation losses. That is one part of the budget picture. Additionally the Provost's Office is overcommitted by \$7.9 M. The aggregate \$12 M shortfall will be shared among the Vice President for University Services (\$2 M), the Provost (\$9.7 M), the President and Development. The Provost will share his \$9.7 M to the academic units using a mixture of across the board assessment and differentiated assessment intended to provide incentive for behaviors like increasing enrollment.

There were questions:

- will the Legislature put up additional funding?; the Budget Priorities Committee should report to the Faculty Senate on a more frequent schedule (Professor Benenson)
- Professor Flynn says there is no chance that the Legislature will reconsider SUNY funding; the Budget Committee is discussing more effective ways to communicate (Professor Nickerson)

**A motion for adjournment carried.**

Respectfully submitted,  
Marilyn McMann Kramer  
Secretary of Faculty Senate

**Present:**

**Chair:** P. Nickerson

**Secretary:** M. Kramer

**Architecture:** R. Shibley

**Arts & Sciences:** J. Conte, J. Holstun, L. Kurdziek-Formato, E. Scarlett, S. Bruckenstein, J. Faran, T.

Gregg, M. Ram,

K. Regan, J. Reineck, D. Schack, W. Baumer, L. Bian, J. Campbell, W. Chang, R. DesForges, L.

Dryden, J. Meacham,

D. Radner, E. Segal

**Dental Medicine:** L. Ortman, G. Ferry

**Engineering & Applied Sciences:** S. Ahmad, D. Benenson, A. Cartwright, R. Mayne, R. Sridhar

**Graduate Education:** J. Hoot

**Health Related Professions:** L. Gosselin, S. Nochajski, J. Tamburlin

**Law:** L. Swartz

**Management:** C. Pegels, R. Ramesh

**Medicine & Biomedical Sciences:** M. Alashari, D. Amsterdam, S. Awner, M. Dryjski, W. Flynn, R.

Hefner, A. Michalek, S. Ohki, R. Sands, C. Smith, J. Yates

**Nursing:** E. Perese, J. Thompson

**Pharmacy:** T. Kalman, R. Madejski

**Social Work:** B. Rittner

**SUNY Senators:** J. Adams-Volpe

**University Libraries:** A. Booth, W. Hepfer, M. Zubrow

**University Officers:** W. Greiner, President

**Guests:**

J. Flynn, Chair, SUNY Faculty Senate

M. McGinnis, *Reporter*

M. Arcara, University Affirmative Action Committee

L. Rosenthal, Associate Counsel

L. Stewart, Director, Equity, Diversity and Affirmative Action Administration

N. Goodman, Vice Provost

**Excused:**

**College of Arts & Sciences:** M. Churchill

**Information Studies:** C. Jorgensen

**Medicine & Biomedical Sciences:** P. Bradford, S. Rudin

**SUNY Senators:** J. Fisher

**Absent:**

**College of Arts & Sciences:** B. Bono, S. Elder, J. Guitart, F. Pellicone, C. Smith, H. Sussman, C. Fourtner, H. Calkins, J. DeWald

**Dental Medicine:** B. Boyd, M. Easley, M. Neiders

**Engineering & Applied Sciences:** D. Malone

**Graduate School of Education:** C. Hosenfeld, B. Johnstone, T. Schroeder, C. Toepfer

**Management:** J. Boot, G. Hariharan

**Medicine & Biomedical Sciences:** B. Albin, J. DeBerry, V. Li, F. Loghmanee, F. Mendel, C. Pruet, S. Spurgeon, J. Sulewski, L. Wild

**Nursing:** P. Wooldridge

**Social Work:** A. Safyer

**SUNY Senators:** J. Boot, H. Durand

**University Libraries:** D. Woodson