

**THE UNIVERSITY SENATE OF
MICHIGAN TECHNOLOGICAL UNIVERSITY**

Minutes of Meeting 293

29 April 1998

Synopsis: The Senate

- (1) tabled the motion on Proposal 8-98, Revision of Scientific Misconduct Procedures, after amending it.
- (2) announced that election of officers would be held 13 May.
- (3) heard that there would be forums Monday 10-11, Tuesday noon and 3-4 the week of 4 May in MUB 105A for non-union staff to explain the use of the language "at will" and "satisfaction" employees.
- (4) heard from Shalini Rudak on the progress of the staff handbook.
- (5) introduced Proposal 10-98, Emeritus Professor Policy.

1. CALL TO ORDER AND ROLL CALL

President Seely called University Senate Meeting 293 to order at 5:31 p.m. on Wednesday, 29 April 1998, in Room U113 of the Minerals and Materials Building.

Secretary Glime called roll. Absent were Senators from Civil & Env. Eng., Institute of Wood Research, Physical Education, and School of Technology. Liaisons in attendance were Anthony Moretti (USG) and Ted Soldan (Staff Council).

2. RECOGNITION OF VISITORS

Guests included Shalini Rudak (Assistant Director, Special Academic Programs) and Andrew Frisbey, USG.

3. APPROVAL OF AGENDA

President Seely requested that items under New Business be modified so that the Discussion of Image Release Draft Proposal would be item 8B and Proposal 10-98, Emeritus Professor Policy would be item 8A.

Williams MOVED and Nesbitt seconded the motion to approve the agenda as amended. The motion to approve PASSED on voice vote with no dissent. [Appendix A. NOTE: Only official Senate and Library archival copies of the minutes will contain a full complement of appendices.]

4. APPROVAL OF MINUTES FROM MEETING 292

President Seely indicated that Les Leifer had requested changes in the recording of his comments. John Sellars had requested one correction in the recording of his presentation. Jeanne Meyers will have these changes.

Senator Nadgorny requested a change in the wording of paragraph 5, second column, on page 7427. It should be clear that it was not Nadgorny, Barna, and the officers who determined that Proposal 4-98 had no future, but rather that Provost Dobney and President Tompkins refused to approve the proposal or any other early retirement reward program. Barna added that it was important to note that the President stated that he would not approve any.

Barna also requested that the wording of his statement in paragraph 3, column 2, on page 7427 be changed so that the words *outlined in the proposal* be changed to *imposed by the Provost*.

Williams MOVED and Arici seconded the motion to approve the minutes of meeting 292. The motion to approve the minutes as amended PASSED on voice vote with no dissent.

5. OPEN MOTION ON PROPOSAL 8-98, REVISION OF SCIENTIFIC MISCONDUCT PROCEDURES [Appendix B]

President Seely reported that the Research Policy Committee had reconsidered the language of Proposal 8-98 based on the discussion in the previous Senate meeting.

Senator Williams (Chair, Research Policy Committee) reviewed the changes made in the wording. On page 2, item 3, *academic faculty* should be *graduate faculty*. In paragraph 5, the first sentence now reads "During *preliminary, informal* inquiries into and investigation of the allegations *by the standing committee of inquiry*, all parties having knowledge of the allegations, including the person(s) against whom the allegations have been made and the person(s) bringing the allegations shall be responsible for maintaining the confidentiality of the proceedings and all evidence developed during these proceedings. On page 6, the final sentence of 6.2.5 was replaced with "Either party or the Formal Investigating Committee may request a hearing in which both parties may have the opportunity to cross-examine the other party and witnesses. The Formal Investigating Committee will arrange such a meeting if both parties agree."

Pennington MOVED and Nesbitt seconded the motion to amend 4. on page 2 so that the second sentence would be "It is imperative that due process be followed *as described by the procedures herein* and protection be afforded to the rights and reputation of both the person(s) against whom the allegations have been made and the person(s) bringing the allegations, collaborators of the person(s) against whom the allegations have been made, those investigating the allegations, any sponsoring agency, any publisher, and the University."

Senator Moore suggested that it would be clearer if it were modified to read "and *that* protection be afforded." The suggestion was incorporated into the motion.

Seely stated that the voting units were academic departments and research units. The amendment PASSED on voice vote with no dissent.

Senator Drummer asked for clarification of the cross examination.

Seely responded that this can occur only in the formal investigation. Both parties have the right to request or to refuse.

Senator Reed added that there is provision for rebuttal but no provision for cross examination unless both parties agree.

Pennington suggested that the last sentence of 6.2.5 would be clearer if it became part of the previous sentence, separated by a semicolon.

Seely added that the proposal was designed to protect the ones with no access to legal counsel.

Reed agreed, stating that it would avoid setting up students to go up against faculty and hindering the process.

Senator Pegg asked if counsel wasn't available to anyone wanting to use it.

Seely stated yes, it is, but that counsel could not cross examine as in a court room.

Vice President Soldan asked if there is a determination after the informal inquiry, and if so, it seemed that one party would not want to proceed, causing them to oppose cross examination.

Seely clarified that the process will always proceed to the investigation stage if the Inquiry Committee determines that any evidence suggests there might have been misconduct.

Soldan continued that cross examination would usually help only one person and that the other would never agree.

Williams agreed.

Senator Shapton stated that three parties can ask for the cross examination. The formal Investigating Committee can request it and either party can request it. Furthermore, the committee can always call a person back a number of times as new information is forthcoming. Therefore, they can get the effect of cross examination but can avoid the confrontation.

Senator Snyder added that the cross examination could be a screaming match.

Senator Walck questioned whether the accused person would have access to the information if there was no cross examination.

Pennington pointed out that the previous sentence provides for them to receive the evidence. He also pointed out that the sentence, with its new corrections, now starts with "The the."

Senator Green stated that he would feel comfortable if the appeal process allowed for cross examination.

Senator Walck expressed concern about 6.1.2, asking what kinds of things could be established as rules of conduct.

Shapton responded that in his experience on the Investigation Committee, this included such things as who to call first, how to get collaboration, how much such people should be told. He expressed concern with how the process moves forward. Does it require a simple majority of 3 out of 5; does the committee vote? Pennington referred to 6.2.3 where it states that the committee must present the report to the Vice Provost for Research and the Vice Provost reviews it.

Williams added that it says that two recommendations may result.

Shapton asked about the vote. Normally people will try to correct the problem before taking it to the committee. Probably if 2 of the 3 Inquiry Committee members think the allegation should be investigated, it will proceed.

In answer to Shapton, Pennington stated that there are rules of conduct for both committees. Item 6.1.2 requires a go/no go decision by the Inquiry Committee. Item 6.2.6 requires a report to the Vice Provost for Research, but does not require a vote.

Reed MOVED and Pickens seconded the motion to remove the new words from the first sentence of 5., leaving it to read "During inquiries into and investigation of allegations, all parties having knowledge of the allegations, including the person(s) against whom the allegations have been made and the person(s) bringing the allegations, shall be responsible for maintaining the confidentiality of the proceedings and all evidence developed during these proceedings." The removal of these words maintains the confidentiality of both committee proceedings.

Senator Snyder pointed out that the confidentiality would end at some point when the results of the inquiry are reported to the sponsor.

Secretary Glime commented that in the two cases where she was involved with proceedings, it was one of the two parties who broke the confidentiality.

Shapton stated that generally the procedure begins after someone has already become unhappy and gone to someone to relay the situation. Thus, cases initiated on campus are likely to be familiar to other personnel before the procedure begins.

The motion to remove the new wording from 5. PASSED on voice vote with some dissent.

Drummer MOVED and Walck seconded the motion to remove the last sentence of 6.2.5 as presented in the draft of 28 April and replace it with "If such a request is made, the formal Investigating Committee will arrange such a meeting."

Shapton repeated that it is important to realize that the Investigating Committee already has cross examination power. He couldn't conceive of a situation in which there has not already been a confrontation before the committees get involved.

Pennington expressed concern that if a graduate student is the accuser, then the accuser faces cross examination by not only the accused but also by the peers of the accused. This differs from a court where one can expect that the judge is not allied with the accused.

Shapton added that often the relationship between the accused and accuser is quite emotionally charged. The cross examination with both parties present puts the committee in the position of judge.

Snyder agreed that guaranteeing the right to cross examination would mean that if the committee does not require one party to answer a question we could get into a nightmare of legal issues.

Senator Sloan stated that the parties don't know what each other will say in a public forum. There is a severe imbalance in penalty if a professor is found guilty, since he could be blacklisted for life, whereas the graduate student might lose only a few years or get only a reprimand.

Glime stated that in some cases the cross examination could be very intimidating to one of the parties.

Walck stated that concern seems to be about who does the examining, asking if this could be resolved if a third party (the committee?) did the cross examination.

Snyder responded that if the committee is the examining committee, then it would have to be one of the parties who did the cross examination.

Walck suggested that the accused could submit questions to be asked by the committee.

Snyder questioned how cross examination could be accomplished if the allegation comes by way of a letter from someone on another continent, and who would pay for travel?

Reed reminded the Senate that the Investigating Committee is fact-finding and is not a legal body.

Green stated that the process is progressively more intense and that perhaps the final stage (appeal) would be the most appropriate place for the confrontation.

Williams asked why someone might want to cross examine, presuming that it would most likely be that the other person never had to answer some of the questions. Maybe they would have to put up with the cross examination to be sure all questions were answered.

Pennington stated that each person can ask the Investigating Committee to ask the question, and failure to ask would be grounds for appeal.

Barna stated that he is in favor of the amendment, that the person has the right to observe the delivery of the answer.

Glime countered that all questioning is recorded on tape and these tapes are made available to both parties.

Shapton stated that some witnesses would not enjoy being cross examined, and these might be fellow graduate students. The Investigating Committee can examine one party at a time back and forth until they get responses to any allegations.

Seely announced that the voting units are academic and research units.

The voice vote on the amendment was not clear; the motion FAILED on show of hands vote, with dissent.

Williams MOVED and Arici seconded the motion to table the motion on Proposal 8-98 until the meeting of 13 May 1998.

6. REPORT FROM SENATE PRESIDENT

President Seely announced that Senate elections are complete and that the new at-large Senators are Pete Tampas and Beth Reed.

Election of Senate officers will occur at the last meeting, 13 May. An announcement calling for nominations will go out tomorrow.

Seely received a letter of thanks from Jim Mitchell (Chair, Board of Control) for Seely's letter expressing appreciation for Mitchell's role in removing the "at will" language. **[Appendix C]**

Proposals 1-98, Student Academic Grievances and 2-98, Pre-Law Option in the BS in Social Sciences Degree, have been approved by the administration. **[Appendices D and E]**

Seely has discussed with Mark Campbell of Bresnan the possibility of televising Senate meetings and Campbell seems supportive. Seely expects to be able to televise meetings starting with the fall sessions.

Proposal 6-98, English Education Option in the BA in Liberal Arts Degree, has been sent to the Provost. Proposal 9-98, MS in Engineering Science (Environmental) has been forwarded to the Curricular Policy and Finance Committees. **[Appendices F-H]**

The officers and Finance Chair Barna met with the Provost earlier in the day to discuss the budget and other issues. There will be a special meeting of the Senate next week for the Provost to present the modified budget.

Seely stated that the Senate seems divided on the retirement issue. He suggested that the Provost could make a statement about the Administration's position on no more early retirement packages and the "me too" promise.

The ad hoc committee dealing with the change in the "at will" language (alternate procedure) has raised a number of concerns and has been talking to affected persons. The proposed probationary period in particular is of concern. The responses to queries indicate that we need to educate the affected staff. Many do not understand the meaning of "at will" or "satisfaction" employees. Seely pointed out that if there is no probation, the "at will" clause will stay.

There will be three informational forums the week of 4 May to help inform staff about the effects of the language changes.

Responses to the proposed probationary period run the full range from none to two years.

Seely asked the Senators of non-academic units to make their constituents aware of the forums. He added that some Board members are adamantly opposed to the language change.

Seely announced that the meeting next week will be devoted solely to the budget, with a presentation by Provost Dobney.

Senator Pegg asked if we could see anything ahead of time so that we could ask intelligent questions. Seely responded that he would try.

7. COMMITTEE/BUSINESS REPORTS

A. Staff Handbook -- Shalini Rudak and Kip Paxton

President Seely stated that the Human Resources Department will be responsible for maintaining the staff handbook. He pointed out that the handbook is not up for a vote and that it contains no new policy.

Shalini Rudak (Assistant Director, Special Academic Programs) and Kip Paxton (Chair, Professional Staff Policy Committee) reported on the handbook.

Rudak stated that the handbook is not a procedures manual. It directs people (non-union exempt and non-exempt staff) to the appropriate office. They anticipate that the handbook will be available in the fall.

Paxton stated that the Professional Staff Policy Committee reviewed the handbook and that it is not like the faculty handbook. They felt it is a good document.

The Staff Committee would like to review the handbook early each academic year to make suggestions for changes or improvements to the Human Resources Department.

Grievance procedures had been part of the handbook, but these will go instead to a separate committee.

Vice President Soldan asked when the handbook would be online or otherwise available for review.

Rudak responded that it would be available in the fall; the lawyer will review it again. They got lots of feedback from staff along the way and benefitted from their fresh eyes.

Paxton added that Horsch will consider updates from any individual at any time.

B. Procedures for Threatening or Violent Behavior Policy [Appendix I]

President Seely stated that he and Senator Ouellette had drafted procedural language to support the threatening and violent behavior policy. The Stanford procedure provided a good model. This is still in draft stage because they have not been able to talk to Ingrid Cheney yet.

The procedure has a three-part structure. The first is an educational program to help prevent unacceptable behavior. The second outlines how to handle incidents of threatening or violent behavior. The third handles the aftermath of such incidents.

Senator Pegg asked for clarification of what the Senate decided to do about threatening speech. Seely responded that we decided speech is behavior.

Snyder questioned the use of the term diversity in 3.b.4, 3.c.4, and 3.d.5. Seely responded that those were clerical errors and should be changed to severity.

8. NEW BUSINESS

A. Proposal 10-98, Emeritus Professor Policy [Appendix J]

Senator Nadgorny, Chair of the Academic Policy Committee, distributed the proposal. Nadgorny stated that many campuses are currently revisiting the emeritus issue and that the population of retirees is bigger, healthier, and more active. In fact, in the MTU Physics Department there are approximately 100 retirees at present.

An example of attention toward retirees is the 100-page web site for retiree issues at the University of Southern California. They support such things as news letters, and have a retiree center that is supported almost entirely by the Provost.

Nadgorny listed the changes in the proposed policy. All emeritus faculty would hold the same rank, that of Professor Emeritus. When being awarded that rank, they would be given public recognition and an "honorary certificate" at the nearest commencement.

Department charters should include the procedure to elect Professor Emeriti and the privileges awarded. There is no current consistency in any of these.

Nadgorny separated those privileges that would be awarded to all and those that were recommended but not required. In the first category are email access, mail address, and departmental mailbox (if desired); continuing notification of developments or changes affecting emeriti interests; receipt of all campus publications and sources of information; access to credit union service; eligibility for appointment or election to University, College, Departmental, and Senate committees; establishment of an association of emeriti; access to campus facilities for association meetings; representation of emeriti association on the MTU Senate. Recommendations also include invited participation in public ceremonies; invitation to participate in appropriate seminars, colloquia, lectures, etc.; full faculty privileges in using campus recreational and social facilities and access to all cultural and social events restricted to the MTU community.

B. Discussion of Image Release Draft Proposal [Appendix K]

Seely introduced the draft dated 13 April 1998.

Senator Williams stated that student photos have been put on the web and that there is no more control of these at that point.

Vice President Soldan responded that the statement only refers to those images collected in Quick Works for the University ID.

Senator Pennington stated that the policy refers to pictures where students have no control over their use - required pictures.

Senator Lutzke related a case from another university wherein a student had posted a faculty photo on the web with derogatory comments. The school suspended the student, but the student contested it in court and was awarded \$30,000!

9. ADJOURNMENT

Ouellette MOVED and Pennington seconded the motion to adjourn. The meeting adjourned at 7:25 p.m.

Respectfully Submitted by Janice M. Glime

Secretary of the University Senate