Senate Council
August 28, 2017

The Senate Council met in regular session at 3 pm on Monday, August 28, 2017 in 318 Patterson Office Tower. Below is a record of what transpired. All votes were taken via a show of hands unless indicated otherwise.

Senate Council Chair Katherine M. McCormick called the Senate Council (SC) meeting to order at 3:00 pm.

1. Minutes from August 14, 2017 and Announcements
The Chair reported there had been no changes to the minutes. There being no objections, the minutes from August 14 were approved as distributed by unanimous consent. She welcomed Eric Marr, a student representing the College of Pharmacy. Those present introduced themselves, including invited guests.

2. Degree Recipients
a. Second August 2017 Degree List
Bird-Pollan **moved** that the elected faculty senators approve UK's second August 2017 list of candidates for credentials, for submission to the President to the Board of Trustees and Schroeder **seconded**. A **vote** was taken and the motion **passed** with none opposed.

b. Late Additions to May 2017 Degree List (per *Senate Rules 5.4.1.1.D.1-2*)
i. Late Addition to Degree List – Graduate School Student KM-79
The Chair noted that a representative from the requesting unit typically attended the SC meeting, but no such representative was available to attend. She explained that if there were questions from SC members, the item could be delayed until the SC met again, but noted that delaying the review would likely mean the student would not be presented to the Board of Trustees until much later in the semester.

Bailey **moved** that the elected faculty senators amend the May 2017 degree list adopted at the May 1, 2017 Senate meeting by adding the MA in Mathematics for student KM-79 and recommend through the President to the Board of Trustees that the degree be awarded effective May 2017. Schroeder **seconded**. There was no discussion. A **vote** was taken and the motion **passed** with none opposed.

3. Committee Reports
a. Report from Ad Hoc Committee on *Administrative Regulations 6:2* ("Policy and Procedures for Addressing and Resolving Allegations of Sexual Assault, Stalking, Dating Violence, and Domestic Violence") (Discussion Only)
The Chair noted that some of the members from the Ad Hoc Committee on *Administrative Regulations 6:2* ("Policy and Procedures for Addressing and Resolving Allegations of Sexual Assault, Stalking, Dating Violence, and Domestic Violence") were present for the meeting and she thanked them for attending. She further explained that the Committee had sent forward a memorandum with 17 points of recommendation, as well as a draft of what *AR 6:2* might look like if the recommendations in the memo were codified in the *AR*.

By way of background, the Chair explained that *AR 6:2* was implemented without input having been solicited from the University Senate. At the SC's 2016 summer retreat, there was sentiment expressed that SC would like the opportunity to review the regulation, along with colleagues from the Staff Senate and Student Government Association. A committee was charged by the SC at its 2016 retreat and included representation from these two bodies, in addition to Chair Bird-Pollan and faculty nominated

by SC members. The Committee's report will be shared with each body's executive committee. The charge to the Committee was to review *AR 6:2* and make recommendations about the regulation, such as appropriateness and implementation, with a focus on issues of substance. The Chair reminded SC members that the SC's role was to review the Committee's report and recommendations and ask questions of Bird-Pollan, who chaired the Committee. Bird-Pollan can take SC's comments back to the Committee, which may or may not revise its memorandum and tracked-changes-version of *AR 6:2*. The Committee's final recommendations will return to SC for a vote, after which the Chair can send the work to President Eli Capilouto and Provost Tim Tracy. Any proposed revisions will then be sent to the Regulation Review Committee for their review. The Chair noted that the membership of the Regulation Review Committee included four SC chairs (Kaveh Tagavi, David Randall, Andrew Hippisly, and the current Chair, McCormick). If revised regulation were forwarded to the Regulation Review Committee by University administration, the Chair asserted that non-substantive issues and the like could be addressed at that time by that body. If changes are recommended by the Regulation Review Committee, the revised *AR 6:2* will be presented to [SC and] Senate for endorsement.

Bird-Pollan shared that more members of the Committee were scheduled to arrive, as their schedules permitted. She said she echoed the Chair's comments and that the Committee met weekly for about eight months; its composition included representation from all parts of campus. Many members were nominated because of their scholarship or expertise in an area related to the issues addressed in the regulation. She noted that at times, depending on the issue, some members of the Committee held views in opposition to the majority of Committee members and that discussions were not always unanimous. That being said, Bird-Pollan opined that the final product of the Committee was something about which all its members felt good. Regarding the work of the Committee, Bird-Pollan explained that members reviewed what other institutions do and that many of the Committee's recommendations are "best-case-scenario" suggestions if the drafting of *AR 6:2* was starting from scratch. The majority of the recommendations pertained to increasing and clarifying procedures in *AR 6:2*.

The Chair opened up the floor for discussion. SC members were generally receptive to the recommendations, although there were a handful of issues that resulted in significant discussion.

- The choice of one standard of proof over another ("preponderance of evidence" versus "clear and convincing evidence").

Grossman said that he recognized that "preponderance of evidence" was documented in communications from the federal government, but given the new administration, he wondered if there was any indication that the standard of proof might change to "clear and convincing." Bird-Pollan said that the Committee had mixed views, but that "preponderance of evidence" was determined to be the most appropriate because of the Committee's recommendation to combine *AR 6:2* and *AR 6:1* ("Policy on Discrimination and Harassment"). In a legal context, harassment and discrimination would be a civil matter and has the lower of burden of proof (preponderance of evidence).

Wood asked if the regulation could be revised in such a way as to use "preponderance of evidence" for cases that warranted the lower burden of proof and use "clear and convincing evidence" for cases that warranted the higher burden of proof. Guest Marcy Deaton (senior associate general counsel) said that there was no specific legal reason why, although as it pertained to Title IX cases, the purpose was to protect the right to an education for the complaining witness [victim-survivor]. If the federal government changed its guidance, then she asserted that UK would at that point certainly rethink it, but for now UK was likely to operate under the same burden of proof (preponderance of evidence) as had

been used for the last few years. Bird-Pollan commented that it would be difficult for the hearing panel to ever have enough information to utilize the "clear and convincing" standard due to the nature of the investigation (DNA evidence not used, etc.) Such University investigations were not criminal investigations of a particular person, but rather a process utilized to ensure the University is protecting a space for a member of the University.

Tagavi asked if it was feasible to have a happy medium, whereby "preponderance of evidence" would be used for a finding of guilt, but that "clear and convincing evidence" would be used in regards to sanctions. Blonder suggested the SC avoid any recommendation that UK deviate from what other universities do and what the federal government has directed – she said that would not be productive. Bailey thought having two standards of proof could be confusing; Tagavi explained that his comment pertained to requiring a higher standard of proof (clear and convincing evidence) for any sanction that involved termination of employment. Grossman opined that the body considering sanctions would naturally take into consideration information such as whether a person had a history of being a predator or who may have made one very bad decision.

- Who fulfills the role of a "mandatory reporter."

Mazur asked for more information on who the Committee recommended would be described as "mandatory reporters," noting that currently it is almost every faculty member. Bird-Pollan said that the Committee was worried that having everyone as a mandatory reporter would stifle otherwise productive conversations. The Committee's recommendation on this particular matter echoed what was in the "dear colleague" letter; UK currently defines all employees as "responsible employees" but the Committee recommended narrowing the group , generally, to employees with the authority or duty to report. She noted that the Committee was unable to come up with a better way to define "responsible employees" but said it was better than trying to name employees individually.

- Ability of a complaining witness to appeal a hearing panel decision when a respondent [the accused] was found "not responsible."

Tagavi expressed concern that someone who was found 'not guilty' could have the case tried again. He asked if federal law required that aspect of the regulation. Deaton said she thought the language was not in the law, but rather was included in a "dear colleague" letter. Grossman and Deaton pointed out that the appeal would have to be based on procedural issues, not on a complaining witness not liking the outcome. Tagavi said he was also worried about a possible lack of objectivity because the University representative could be hand-picked by a University president who tells the representative that the goal is a finding of guilt for the respondent. At that point, the representative would not be objective. Tagavi opined that the chair of the University Appeals Board (UAB) is hand-picked by the president, which adds another layer of non-objectivity. In a criminal case, Tagavi asserted, a complaining witness could not appeal a finding of "not guilty" based on procedural issues, except in extreme circumstances.

Cross opined that there were many areas within the University where there was good reason for appeals based on procedural issues. Bird-Pollan said that she sympathized with Tagavi's concern to a certain degree; it was her opinion that conflict and non-objectivity was essentially built into the system because everyone who serves on a hearing panel would be a member of the University community. She said one way the Committee attempted to ensure some level of objectivity was ensuring that each hearing panel included fully tenured faculty members. Bird-Pollan noted that the *AR* is intended to facilitate the University's capacity or ability to create a safe space. The process is intended to serve as a

way for the University to protect itself against bad actors and its limitations are that it is a University procedure comprised of University members. The Committee had discussed the possibility of having members of the local community serve on hearing panels to remove the objectivity issues, but that was simply not feasible.

Wood stated that while she completely concurred with the notion of making the University a safe place, if a possible penalty is termination of employment, then the standard of evidence should not be 51% [preponderance of evidence]. She expressed agreement with Tagavi's comments, saying that when the matter under discussion is as serious as termination of a faculty member and destruction of their livelihood, it must be a higher standard of evidence.

Grossman opined that the general intent of the passages under discussion were fine details and could be handled by the Regulation Review Committee if the changes made it that far. He said his concern was getting the Committee's work to President Capilouto in as supportive a way as possible, without wordsmithing the report.

- If the term "harassment" is it limited to one type of harassment.

Blonder asked if the use of "harassment" in *AR 6:2* was limited to sexual harassment or if it included other forms of harassment. Bird-Pollan said that the term included all forms of harassment, not just sexual harassment. She said that the Committee took all of *AR 6:1* and inserted it into *AR 6:2* – all forms of discrimination and harassment would be covered under *AR 6:2*. She said the impetus for that recommendation from the Committee was that the robust procedures in place for *AR 6:2* ought to also be in place for harassment.

- The perception that one person makes all the decisions.

Schroeder recalled that at some of the SC's discussion on this issue, there was concern that one University official was responsible for making all decisions and also for relaying them to the parties involved. She asked if the Committee had discussed how to help that office so that one individual was not filling multiple roles. Bird-Pollan said that the Committee had three specific recommendations to help with that issue. First, the Committee recommended that the University representative be one person, who is well versed in matters surrounding *AR 6:2* and who has such matters as their primary responsibility. Bird-Pollan said that this would result in increased adherence to procedural matters over time. The second related recommendation was for the University to provide case managers for a complaining witness as well as for a respondent; if case managers are available to both parties and at every level and at every step, the case managers will be able to provide support and direction to the parties involved. The third related recommendation was to have attorneys provided for both parties, along with UK being responsible for the attorneys' fees.

- Reconsideration of sanctions.

Tagavi asked about the current process that allows a University representative [the dean of students in cases involving students and an appropriate unit administrator in cases involving employees] to change a sanction as determined by the hearing panel. Bird-Pollan explained that the Committee (in recommendation number 12) recommended that instead of the dean of students being authorized to change the sanction, the hearing panel would be the entity responsible for deliberating on a request to change (increase or decrease) a sanction. Tagavi also took issue with the sanctions not being in any

particular order of seriousness, as well as the ability of the hearing panel to possibly misinterpret the intent of "…Other appropriate remedies…." He was concerned that because "appropriate" was not defined, there was no possible way to appeal based on the appropriateness of the sanctions. Bird-Pollan commented that there had never been this type of hearing that involved a faculty member. She noted that the complexity of the issues explained why it took the Committee eight months to complete its work; it was necessary to have language that would encompass a wide variety of different scenarios.

Grossman asked Deaton if she had any idea about what parts of the proposed changes might be acceptable to senior leadership. Deaton opined that it was likely that some changes would be well received, but others less so. She noted that the things that may be most objectionable would likely be suggestions to deviate from the strict language in "dear colleague" letters and federal guidance. She said there were a few issues from the day's discussion that she wanted to research and discuss with UK's Title IX coordinators.

- How appeals of an interim suspension will be handled, and by whom.

Blonder asked for more information about the process by which a faculty member could appeal to the Senate's Advisory Committee on Privilege and Tenure (SACPT). She asked if the appeal would go to the SACPT, then the SACPT would recommend an action to the President, and then the President would decide whether or not to accept the appeal. Bird-Pollan thought that was indeed the case, but noted that it was one of the other Committee members who was more knowledgeable about SACPT than she is. For staff employees, an appeal of an interim suspension would be presented to the Staff Senate's Staff Issues Committee, for recommendation to the President.

- Explicit statement differentiating typical classes and classes not held in a physical location.

Blonder asked for more information about the explicit statement regarding online and in-person classes. She noted that there was a recent situation where online learning activities were not automatically presumed to be part of a classroom setting. Bird-Pollan said that the term "University premises" was defined in such a way as to make it clear that it included all property, both real and virtual. Grossman explained that there was a situation in which an assignment was submitted online to a faculty member and subsequently distributed for peer review, although the assignment also included verbal abuse of the instructor. He said the issue pertained to where the scenario occurred. If a student uses profanity directed at a faculty member in the faculty member's office, it was an issue of free speech. If a student did the same in a classroom, it would be considered a disruption of the classroom and not a free speech issue.

The Chair noted that there were additional agenda items to be addressed, if there were no further comments or questions. Those present offered their deep appreciation and thanks for the Committee's hard work and subsequent memo and proposed changes to the AR.

4. Results of 2016-17 Faculty Evaluation of the President
Bailey, who led the group that conducted the evaluation, presented the results to SC members.

5. Tentative Senate Agenda for September 11, 2017
SC members discussed the tentative agenda and agreed to remove the item from the Senate's Academic Programs Committee (SAPC). Those present agreed that more discussion was necessary before the item was presented to Senate.

Wood **moved** that the SC approve the revised tentative Senate agenda for September 11, 2017 as an ordered list, with the understanding that items may be rearranged to accommodate guests' schedules. Mazur **seconded**. A **vote** was taken and the motion **passed** with none opposed.

Respectfully submitted by Katherine M. McCormick,
Senate Council Chair

SC members present: Bailey, Bird-Pollan, Blonder, Childress, Cross, Grossman, Lauersdorf, McCormick, Marr, Mazur, Schroeder, Tagavi, and Wood.

Invited guests present: Jeffrey Bosken, Marcy Deaton, Diane Follingstad, Beth Kraemer, and TK Logan.

Prepared by Sheila Brothers on Wednesday, August 30, 2017.