

University Senate
May 7, 2018

The University Senate met in regular session at 3 pm on Monday, May 7, 2018 in the Athletics Association Auditorium of W. T. Young Library. Below is a record of what transpired. All votes were taken via electronic voting devices unless indicated otherwise. Specific voting information can be requested from the Office of the Senate Council.

Senate Council Chair Katherine McCormick (ED) called the University Senate (Senate) meeting to order at 3:00 pm. She thanked senators for attending and reminded them that Senate follows Robert's Rules of Order (Newly Revised). She suggested civility in discussions and urged senators to be good University community citizens by representing their respective colleges. She ended with a friendly reminder for senators to participate in the meeting and to leave their voting devices upon departure.

The Chair called for an attendance vote and 53 senators registered their presence. The Chair reported that the faculty trustee report was inadvertently left off of the day's agenda, but the trustees did have information to share with senators. She said she planned to add their report to the normal order of business, unless there were any objections. There were no objections from senators.

1. Minutes from April 23, 2018 and Announcements

The Chair noted that editorial changes were received for the minutes. There being **no objections**, the minutes from April 23, 2018 were **approved** as amended by **unanimous consent**. The Chair reported a series of announcements.

The SC held a special meeting this past Thursday and met for an hour to discuss the proposed changes to *Administrative Regulations 6:2* ("Policy and Procedures for Addressing and Resolving Allegations of Sexual Assault, Stalking, Dating Violence, and Domestic Violence"). The Senate will discuss that *Administrative Regulation (AR)* later today.

There were a number of senators whose terms were ending; the Chair asked them [Allaire; Brion; Cheng; D'Orazio; Escobar; Flaherty; Geneve; Howe; Jones; Kearney; Morey; Murrell Taylor; Noland; Pakath; Rohr; Sandmeyer; Spear; Stevens; Vickery; Visona; Whitaker; Whitaker; Woodrum; and Woods.] to stand and be recognized for their service. She expressed appreciation for the work they had already done and noted that some were reelected and would be returning to Senate.

The Chair noted that UK's research professor awardees were honored the prior weekend, noting that a senator, Farrell (FA), was among the recipients. She offered congratulations to UK's 2018-19 Research Professors: David Van Sanford (AG/Plant & Soil Sciences); Matthew Zook (AS/Geography); Heidi Gluesing-Luerssen (AS/Mathematics); Nancy Harrington (CI/Communication); Jennifer Wilhelm; ED/STEM Education); Rick Honaker (EN/Mining Engineering); Herman Daniel Farrell III (FA/Theatre and Dance); Daniel Brass, (BE/Management); Brian Noehren (HS/Rehabilitation Science); Richard C. Ausness (LA); Sharon Walsh (ME/Behavioral Science); Mark V. Williams (ME/Internal Medicine); Jon Thorson (PH/Pharmaceutical Sciences); and Heather M. Bush (PbH/Biostatistics). The Chair added that research professorships are awarded based on faculty nominations within colleges, which are then forwarded to President Eli Capilouto.

Staff and others were concerned about the language in the biennial budget's that terminated a requirement for tuition agreements among KY universities. (UK's Employee Education Program and Family Education Program were unchanged.) After work by senior leadership, for the next three years, UK will pay the tuition for employees taking classes at other KY institutions. She suggested that senators review the April 20 email from President Capilouto for details.

The SC is scheduled to meet with the President's Faculty Sustainability Council (chaired by Lee Meyer [AG/Agricultural Economics]) to offer feedback. The Sustainability Council's report will be shared with the Senate in the fall.

The ad hoc UK Core Review committee has completed its work on recommendations for UK Core assessment and its final report is almost complete and will be available in the fall.

Final touches are being added to the Graduate Education Implementation Committee, which will begin its work in the fall.

Regarding dean searches, Rudolph G. Buchheit has been named the Dean of Engineering and will begin on July 1. The Gatton College dean search committee will meet with Provost Blackwell the following week. Searches are ongoing for interim deans for the Colleges of Education and of Communication and Information; national searches for permanent deans for both colleges will begin in the fall. The Libraries dean search was suspended but will begin anew in the fall – the Chair referred senators to the Provost's email from April 20 for additional details about the Libraries dean search.

The Chair reminded senators about curricular deadlines for the coming year, noting that the purpose of announcing deadlines was to ensure faculty have sufficient information related to (post-Senate) deadlines for Board of Trustees meetings and for Council on Postsecondary Education meetings, which can also be part of a particular proposal's approval process. If faculty are seeking a fall 2019 effective date, curricular proposals must be reviewed by the appropriate academic council(s) (GC, HCCC, UC) and received by the SC office by:

- February 5, 2019 for new degree program proposals
- March 15, 2019 for other proposals requiring cmte review (new certificates, transfers of a degree, new department, change to credit hours required for graduation, significant program changes, etc.)
- April 15, 2019 for courses, all other program changes, and minors

The Chair noted that curricular proposals begin their Senate-related review at the level of the Senate's academic councils (GC, HCCC, UC). Reviews at these bodies can vary from two weeks to a few months, depending on a proposal's quality and/or complexity; proposers should expect the possibility of requests to clarify information as needed. Deadlines have been established to ensure reasonable time for review, not to guarantee an effective date. Incomplete proposals, those with unresponsive contact persons, etc. may not be approved in time for a fall 2019 effective date.

The Chair said that the Senate Council office had secured funding from the President's Office to begin the process of moving program proposals into Curriculog, which already houses course proposals.

2. Officer and Other Reports

a. Chair

The Chair explained that both the Chair and SC have the authority to take actions on behalf of the Senate, as long as those are reported to Senate. On behalf of the SC and Senate, on April 30 the SC approved two calendar changes for the College of Medicine (2017-18 and 2018-19). The changes

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involved adding May 31 as an additional graduation date, which will be used by students who are one course short of criteria for graduation.

The Chair reported that the Senate Council office received Senate college election results from: Agriculture, Food and Environment; Gatton College of Business and Economics, Engineering, Health Sciences, Law, Pharmacy, and Social Work. The Chair asked faculty to note the colleges from which results had been sent and suggested that if a senator's dean's office or faculty council had not yet reported the election and sent the results to the SC office, to please encourage them to do so. She added that letters of appointment to new faculty senators, who will start their terms in August, would be going out later in the week.

Over the past weekend UK held four commencement ceremonies for more than 5,000 graduates. The Chair explained that she received a thank-you email from President Capilouto; she read his remarks to senators.

Thank you for representing the faculty at the four graduation ceremonies and your role in personally handing to me on their behalf individual degree binders to thousands of graduates. As we are closest to these graduates when they receive these, I think you'll agree that their faces are filled with joy and gratitude that stick with you. For this I'm filled with thankfulness to the faculty for their teaching, care and nurture of students that leads to this milestone.

I will appreciate your conveying to the faculty and Senate my deepest appreciation for their selection of honorary degree recipients. The night before the ceremonies begin Mary Lynne and I host them, their family and close friends at a Maxwell Place supper. In welcoming them at the start of our meal I share in the spirit of full disclosure that I had nothing to do with their selection. I simply have the honor of informing them in a phone call and extending hospitality. I further shared with them that they reflect the best values and spirit of our faculty in that their lives of rich purpose and meaning are what we hope for in our graduates. As the orator read their stories in the respective ceremonies I felt as if our graduates and those in the audience heard that high character and Good deed are still this country's greatest currency. It filled Rupp Arena with the pride and mutual respect that comes from being part of something unique and bigger than one's self. This is UK. This is a community of belonging to which we aspire. Please let the Senate know my regard and appreciation for those chosen to receive our highest honor.

The Chair reminded senators to please complete the faculty survey of the President, noting that the deadline was May 26 to complete it. The survey results will be shared with President Capilouto and the Executive Committee of the Board of Trustees. The Chair offered thanks to Jennifer Bird-Pollan (LA), Margaret Schroeder (ED), and Connie Wood (AS) for their work on this survey, with special thanks to Kristen McQuerry in the Department of Statistics.

b. Vice Chair

Bird-Pollan (LA) thanked senators for the nominations received for the Outstanding Senator Award. The 2018 Outstanding Senator Award was presented to Herman Farrell (FA/Theatre and Dance). Farrell complimented the Chair on her candor, demeanor, and her constant reminder for civil discourse, noting that the Chair has made the curricular approval process much better for everyone. Farrell also thanked

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the Chair, Ms. Brothers, and members of the Senate's Admissions and Academic Standards Committee (SAASC), which he chaired. Senators offered their own appreciation through a round of applause.

c. Parliamentarian

There was no report from Cross (CI), the parliamentarian.

d. Trustee

Grossman (AS) referred to a question posed to him during a recent meeting, regarding the space near [the now-vacant] Kennedy's Bookstore and Fazoli's. Grossman said he learned that there is a plan to put offices on the first floor of the old Kennedy's area and put parking on the floors above.

Blonder referred to the email she sent to faculty previously, regarding academic freedom and tenure. She explained that during the most recent Board of Trustees (Board) meeting, President Capilouto stated that tenure was sacred to trustees and that two other trustees made statements in support of tenure. Blonder read the statement that she gave to the Board and emailed to faculty earlier in the week.

Last week I sent an email to all faculty concerning the May 1st Board of Trustees meeting and our discussion of new legislation on faculty employment. At this meeting, President Capilouto gave a report to the Board. During his report, the President reiterated his commitment to academic freedom and his belief that tenure is sacred. Following the President's comments, Board Chair Britt Brockman opened the floor for discussion. I and Board Vice Chair Mark Bryant and Trustee David Hawpe made statements in support of faculty and tenure. I would now like to read to you my statement to the Board of Trustees. This is what I said:

'I want to address the implications of the law that the Kentucky General Assembly recently enacted regarding Faculty Employment. The portion of the law applicable to UK reads as follows:'

"...Each Board of Regents or Board of Trustees of a state-funded university may reduce the number of faculty, including tenured faculty, when the reduction is a result of the Board discontinuing or modifying an academic program upon compelling evidence the program changes are in the university's or college's best interest due to low utilization, financial feasibility, budgetary constraints, or declaration of financial exigency....When a faculty reduction occurs pursuant to this section, the board shall provide ten days' notice in writing to the faculty member or members being removed as a result of the reduction stating the Board's reasoning. The provisions of this section supersede any and all policies governing the faculty employment approved by a Board of Regents or Board of Trustees."

'It is my understanding that this law is permissive not mandatory, meaning that this law does not compel the Board of Trustees to revise the University's Governing Regulations, policies, or procedures. However, under this law, Governing Boards have the legal authority to close or modify academic programs and fire faculty, including those with tenure, following ten day notice.'

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'This law has serious implications for faculty, may violate due process, and erodes the very principles upon which great universities are founded. While President Capilouto has assured the University Senate and the Campus community that the administration intends to follow our Governing Regulations and procedures as written, it is the Board of Trustees who is in fact invested with the authority to enforce the law. Today we have an opportunity to send a strong message to current and future faculty and students - that we too intend to continue to follow our current GRs.'

'At present, current policy states that except in cases of financial emergency, the termination of a tenured appointment or the dismissal of a person prior to the expiration of a non-tenured appointment shall be, in accordance with KRS 164.230, only for reasons of incompetence, neglect of or refusal to perform duties, or for immoral conduct. With respect to the authority granted under this law to eliminate or modify majors or degree programs, we, the Board of Trustees, under our current GRs entrust the academic expertise of the University Senate to determine the academic merit of each degree program, so that the Board will not academically close any degree except upon the recommendation of the University Senate. Other decisions on the academic status and content of academic programs shall be made by the University Senate, pursuant to procedures contained in the University Senate Rules. The rules and regulations we currently abide by reflect our commitment to our mission and core values.'

'At its April 2nd meeting, the University Senate Council passed a resolution to ask that the University administration actively lobby against the inclusion of tenure language in the future budget because such language is not in the best interests of faculty, staff, students, or higher education in Kentucky.'

'There are numerous reasons why it is imperative that the Board convincingly reassure faculty and students that we intend to follow our current Governing Regulations in matters related to program closures and firing of faculty- including those with tenure. I would like to highlight three: First, if exercised, this law may have the potential to jeopardize accreditation, not just by SACSCOC but also by agencies that accredit our professional programs. Second, if carried out, this law will most certainly land the University on the AAUP list of censured institutions, those that are not observing generally recognized principles of academic freedom and tenure endorsed by the AAUP, the Association of American Colleges and Universities, and more than 150 other professional and educational organizations. Third, as I think we would all agree, faculty make an enormous contribution to this university. They teach, mentor, administer, conduct research, engage in scholarly and creative activities, care for patients, and perform service to the university, the community, and beyond. If our goal is to strive to be outstanding, and to retain and attract top faculty and students, the presence of this law may compromise our ability to do so. Many faculty have choices as to where they work, including multiple offers from states and institutions that do not have such a law on the books.'

'In conclusion, in my role as a faculty trustee with a fiduciary responsibility to this university, I believe it is imperative that our Board of Trustees go on record, as President Capilouto has, to affirm our commitment to the principles that sustain higher education

in the US- including tenure, academic freedom, shared governance and the processes and core values we currently espouse in our GRs.'

Senators noted their appreciation for Blonder's comments via a round of applause. Kennedy (emeritus senator) opined that the statement was excellent and the Senate should reinforce it. Kennedy **moved** that the Senate endorse Blonder's statement regarding faculty employment and programs and that the University Senate's endorsement be reported to the Board of Trustees by President Capilouto. Tagavi **seconded**. Senators briefly discussed the motion. A **vote** was taken via a show of hands and the motion **passed** with none opposed.

3. Degree Recipients

a. Honorary Degree(s)

The Chair invited Graduate School Dean Brian Jackson to present the nominee for a December 2018 honorary degree. The Chair reminded senators and guests that the information was embargoed and should not to be disseminated or shared until the Board of Trustees reviews the proposed honorary degree nominees. Dean Jackson presented the nominee recommended by the University Joint Committee on Honorary Degrees (UJCHD).

The Chair explained that the **motion** was a recommendation from SC that the elected faculty senators approve VGC as the recipient of an Honorary Doctor of Humanities, for submission through the President to the Board of Trustees. Because the motion came from committee, no **second** was necessary. There was one comment. A **vote** was taken and the motion **passed** with none opposed.

4. Committee Reports

a. Senate's Academic Organization and Structure Committee (SAOSC) – Al Cross, Chair

i. Proposed New Center for Innovation in Population Health

Cross (CI), chair of the Senate's Academic Organization and Structure Committee (SAOSC), explained that because the proposal was for a multidisciplinary research center, there would be two motions for Senate. Cross suggested that in the interests of time, he begin by presenting the motion to senators and opening the floor for questions. The first **motion** from the SAOSC was a recommendation that the Senate approve the new academic research program of the proposed new Center for Innovation in Population Health, a multidisciplinary research center (MDRC), on its academic merits. Because the motion came from committee, no **second** was necessary. There was one comment. A **vote** was taken and the motion **passed** with 63 in favor and one opposed.

Cross explained that the second motion pertained not to the academic merits of the proposal, but rather encompassed the organizational, nonacademic aspects. The second **motion** from the SAOSC was a recommendation that the Senate endorse the new Center for Innovation in Population Health, a multidisciplinary research center, on its administrative and organizational merit and recommend that the Board of Trustees approve the establishment of the Center for Innovation in Population Health, in the College of Public Health, effective July 1, 2018. Because the motion came from committee, no **second** was necessary. There were no comments or questions. A **vote** was taken and the motion **passed** with 64 in favor and two opposed.

b. Senate's Admissions and Academic Standards Committee (SAASC) – Herman Farrell, Chair

i. Proposed Change to BSBN Biosystems Engineering

Farrell (FA), chair of the Senate's Admissions and Academic Standards Committee (SAASC), explained the proposal. The Chair stated that the **motion** from the SAASC was a recommendation that the Senate

approve a proposal from the College of Engineering, Department of Biosystems and Agricultural Engineering (Biosystems Engineering program) to change credit hours to 128. Because the motion came from committee, no **second** was necessary. There were no comments or questions from senators. A **vote** was taken and the motion **passed** with 65 in favor, one opposed, and one abstained.

The Chair said that unless anyone objected, Farrell would serve as acting chair for purposes of answering questions of fact only. There were no objections from senators.

ii. Proposed Change to BFA Interiors: Planning / Strategy / Design

Farrell (FA) explained the proposal. There were no questions of fact and there was no debate.

The Chair stated that the **motion** from the SAASC was a recommendation that the Senate approve a proposal from the College of Design, Department of Interiors: Planning / Strategy / Design involving a change of total credit hours from 132 to 128. Because the motion came from committee, no **second** was necessary. A **vote** was taken and the motion **passed** with 65 in favor and two abstained.

iii. Proposed Change to PhD Nursing

Farrell (FA) explained the proposal. There were no questions of fact and there was no debate.

The Chair stated that the **motion** from the SAASC was a recommendation that the Senate approve a proposal from the College of Nursing, to change the PhD program in Nursing by eliminating separate post-MSN and post-BSN admission pathways. Because the motion came from committee, no **second** was necessary. A **vote** was taken and the motion **passed** with 65 in favor, two opposed, and one abstained.

iv. Proposed Changes to PharmD Technical Standards

Farrell (FA) explained the proposal. There were no questions of fact and there was no debate.

The Chair stated that the **motion** from the SAASC was a recommendation that the Senate approve the proposal from the College of Pharmacy to make changes to the technical standards for admission to and completion of the Doctor of Pharmacy. Because the motion came from committee, no **second** was necessary. A **vote** was taken and the motion **passed** with 65 in favor and none opposed.

The Chair said that unless anyone objected, Schroeder (ED) would serve as acting chair for purposes of answering questions of fact only. There were no objections from senators.

c. Senate's Academic Programs Committee (SAPC) – Margaret Schroeder, Chair

i. Proposed New Undergraduate Certificate in Medical Behavioral Science

Schroeder (ED) explained the proposal. There were two factual questions from senators.

The Chair stated that the **motion** from the SAPC was a recommendation that the Senate approve the establishment of a new Undergraduate Certificate in Medical Behavioral Science, in the Department of Behavioral Science, in the College of Medicine. Because the motion came from committee, no **second** was necessary. A **vote** was taken and the motion **passed** with 66 in favor, one opposed, and one abstained.

ii. Proposed New Dual Degree: BS Human Health Sciences (BS HHS) and MS Athletic Training (MS AT) (3+2)

Schroeder (ED) explained the proposal. There were no questions of fact and there was no debate.

The Chair stated that the **motion** from the SAPC was a recommendation that the Senate approve the establishment of a new 3+2 program between the BS Human Health Sciences and MS Athletic Training within the College of Health Sciences. Because the motion came from committee, no **second** was necessary. A **vote** was taken and the motion **passed** with 66 in favor, one opposed, and one abstained.

iii. Proposed New University Scholars Program between the BSCOE Computer Engineering and MSEE Electrical Engineering

Schroeder (ED) explained the proposal. There were no questions of fact and there was no debate.

The Chair stated that the **motion** from the SAPC was a recommendation that the Senate approve the establishment of a new University Scholars Program between the BSCOE Computer Engineering and MSEE Electrical Engineering in the Dept. of Electrical and Computer Engineering within the College of Engineering. Because the motion came from committee, no **second** was necessary. A **vote** was taken and the motion **passed** with 68 in favor and none opposed.

iv. Proposed New Undergraduate Certificate in Production Engineering

Schroeder (ED) explained the proposal. There were no questions of fact and there was no debate.

The Chair stated that the **motion** from the SAPC was a recommendation that the Senate approve the establishment of a new Undergraduate Certificate in Production Engineering, in the Department of Mechanical Engineering within the College of Engineering. Because the motion came from committee, no **second** was necessary. A **vote** was taken and the motion **passed** with 66 in favor and two abstained.

v. Proposed New Undergraduate Certificate in Food Systems and Hunger Studies

Schroeder (ED) explained the proposal. There were no questions of fact and there was no debate.

The Chair stated that the **motion** from the SAPC was a recommendation that the Senate approve the establishment of a new Undergraduate Certificate in Food Systems and Hunger Studies, in the Department of Dietetics and Human Nutrition, within the College of Agriculture, Food and Environment. Because the motion came from committee, no **second** was necessary. A **vote** was taken and the motion **passed** with 63 in favor, one opposed, and two abstained.

vi. University Scholars Programs (USP) Initiative - Bundled Approval of USPs

Schroeder (ED) explained the proposals and the rationale for bundling the proposals together to be acted upon via a single vote. There were no questions of fact and there was no debate.

The Chair stated that the **motion** from the SAPC was a recommendation that the Senate approve the following 13 University Scholars Programs: USP between BS Agricultural Economics and MA Diplomacy and International Commerce; USP between BA Modern and Classical Languages, Literatures and Cultures – Track Classics and MA Classics; USP between BSCS Computer Science and MS Computer Science; USP between BA Modern and Classical Languages, Literatures and Cultures – Track French and Francophone Studies and MA French and Francophone Studies; USP between BS Physics and MS Physics; USP between BSCH Chemical Engineering and MS Chemical; USP between BS Family Sciences and MS Family Sciences; USP between BSMAE Materials Engineering and MSMSCE Materials Engineering; USP between BM Music Performance and MM Music Performance; USP between BA History and MA History; USP between BA Spanish and MA Hispanic Studies; USP between BA Anthropology and MA

Anthropology; and USP between BS Agricultural Economics and MS Agricultural Economics. Because the motion came from committee, no **second** was necessary. A **vote** was taken and the motion **passed** with 64 in favor, one opposed, and one abstained.

vii. University Scholars Programs (USP) Initiative - Bundled Suspensions of Admissions into a USP
Schroeder (ED) explained the proposal and the rationale for bundling the two proposals. There were a handful of questions of fact but there was no debate.

The Chair stated that the **motion** from the SAPC was a recommendation that the Senate suspend admissions into University Scholars Programs in the Department of Chemistry (USP between BS Chemistry and MS Chemistry) and in the Department of Geography (USP between BS Geography and MS Geography), both within the College of Arts and Sciences, effective immediately. Because the motion came from committee, no **second** was necessary. A **vote** was taken and the motion **passed** with 63 in favor, one opposed, and one abstained.

5. Proposed Changes to Administrative Regulations 6:2 (“Policy and Procedures for Addressing and Resolving Allegations of Sexual Assault, Stalking, Dating Violence, and Domestic Violence”)

The Chair reminded senators that President Capilouto spoke briefly to senators at the April Senate meeting regarding proposed changes to *Administrative Regulations 6:2* (“Policy and Procedures for Addressing and Resolving Allegations of Sexual Assault, Stalking, Dating Violence, and Domestic Violence”). She explained that she asked Bird-Pollan (LA), chair of the [now-discharged] ad hoc Committee on *AR 6:2*, to provide an overview of the proposed changes to the *AR* that the ad hoc Committee recommended, as well as talk a little about the changes that have now been made to the *AR*. In addition to Bird-Pollan, the Chair said that she invited Executive Director and Title IX Coordinator Martha Alexander, from UK’s Office of Institutional Equity and Equal Opportunity (IEEO). The Chair summarized the files that were made available to senators for the discussion, including: the current *AR 6:2* that has been in effect since 2016; the proposed revised *AR 6:2*; the current *AR 6:2* but with the proposed revisions in “track changes”; and Bird-Pollan’s narrative comparison of the current and proposed *AR 6:2*.

Bird-Pollan (LA) provided an overview of *AR 6:2*-related activities and dates on which they occurred. She explained that while it was tempting to think of the processes in *AR 6:2* as a substitute for or analogous to criminal law procedures, *AR 6:2* is a response to federal law, to Title IX, to guarantee that educational experience be free from gender-based discrimination. Federal law states that no person, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or opportunities based on sex. Bird-Pollan added that the law has been interpreted by courts as including freedom from sexual assault, etc. Many procedures used on college campuses differ from the procedures used in criminal trials. Bird-Pollan directed senators to her summary outlining major points and said she would yield the floor to Alexander, but could return to answer questions if needed.

Guest Martha Alexander thanked senators for the opportunity to present information and complimented Bird-Pollan’s summary of Title IX. Alexander reiterated that the law was intended to ensure all students have equal opportunities to an education, unhampered by any form of gender discrimination. UK wants our students to be able to move freely around campus and feel safe in their classes. The revised *AR* maintains the same standard of evidence as the current *AR*. Alexander explained that the Office of Civil Rights (OCR) interprets Title IX and periodically sends universities guidance about how to interpret and act in compliance with Title IX. In September 2017, the OCR revoked some prior

guidance about specifically using the “preponderance of evidence” standard of evidence and directed universities to use the standard of evidence that best fit the campus. UK has long used “preponderance of evidence” and it remains the standard in the proposed revised *AR*. (Alexander noted that “preponderance of evidence” was also used in all other complaints of discrimination or harassment.) With “preponderance of evidence,” the burden of proof would remain with the University. The respondent would not be required to prove they did or did not do something, but rather UK would be required to prove that the respondent violated policy. Alexander noted that the *AR* revisions would require hearing panel decisions to be unanimous, while the current standard is for a majority; she explained that the requirement for a unanimous decision was intended to serve as a counterbalance for the preponderance of evidence standard. Alexander noted that one other change from current policy pertained to appellate rights. The current version of the *AR* provides a right of appeal to both parties, but the proposed revision restricts the right of appeal to the respondent, only. According to Alexander, the biggest change to the current regulation was the new ability of an involved party to have their support person, if an attorney, participate actively in the hearing.

Bird-Pollan (LA) stated that those summarized her major points, too, although she thought it was also important to mention that the current regulation dictates that the University will be represented in hearings by the Dean of Students, but the proposed revision to *AR* 6:2 changed that practice and instead outside counsel would represent UK. She also reminded senators that the unanimity requirement for decisions would echo the requirement in criminal proceedings that a jury must come to a unanimous decision. At the Chair’s request, Bird-Pollan described the ad hoc Committee’s composition for senators, which including faculty (majority of membership), one staff member, one student, and two ex officio members (Alexander and Senior Associate General Counsel Marcy Deaton). The floor was opened for questions of fact.

Tagavi asked for guidance as to who was the right person to receive suggested edits regarding the proposed changes to *AR* 6:2. Alexander suggested that revisions be sent to General Counsel Bill Thro.

Kearney (ME) objected to the use of a small committee that would not answer to anyone, asserting that it would lead to muddled situations and following stupid rules. He asked to know the grounds for the authority that would allow General Counsel Thro to ban someone from campus and then issue a gag order to prohibit that individual from speaking to anyone on campus. Kearney asserted that it was his personal experience that General Counsel has a common practice of banning someone from campus and then telling the person not to speak to colleagues, friends, or anyone. Kearney asked where the policy allowed that sort of action. Alexander said she could not answer the second question, but said that the Office of Civil Rights was part of the Department of Education, and their policies included disabilities and other civil rights that affect education. Bird-Pollan (LA) added that the policy was written to protect the rights of students to participate in educational experiences without any threats based on their sex. The Hearing Panels and Appeals Board have the means necessary to enforce the federal rule if one of those bodies believes it [that removal from campus] is necessary.

Duncan (ME) asked if a faculty member was off campus engaged in an activity that included students or staff, would the individuals involved in the off-campus activity be able to make a complaint. Alexander replied affirmatively. Noland (ED) asked if there was a time limit for reporting complaints, noting that the proposed revision just says to report it “as soon as possible.” Alexander replied that there was no time limit and that the sooner someone came forward, the easier it was to do something to help the person experiencing the questionable behavior. Forren (NU) asked Alexander how having attorneys present would change the process. Alexander replied that she felt strongly about having attorneys

present, primarily because it is helpful for students to have someone slightly objective and removed from strong emotional feelings; the attorney can help remind the individual about things they wanted to say, essentially to help someone articulate their side of the story. During a hearing, an attorney would take on the rights of the person they are representing, not gaining additional rights for the respondent – the respondent shares their right to speak with an attorney. Attorneys will not be allowed to cross-examine, but could pass notes to the hearing officer.

Schroeder (ED) asked a follow-up question pertaining to lawyers and associated costs. She noted that Alexander spoke strongly in favor of students have access to legal counsel so Schroeder wondered if UK had a plan to provide an attorney for a student if the student could not afford an attorney. Alexander noted that the issue was discussed in great detail during the ad hoc Committee's deliberations, but added that any objective third party, even a parent, who was not there to make accusations or be the one receiving the accusations, would be helpful. Bird-Pollan (LA) added that the ad hoc Committee recommended a pool of funds or something similar be established; she opined that the Committee would probably still encourage the University making such a pool of money available.

Jones, D. (ME) commented that the ad hoc Committee spent a lot of time anguishing over a variety of issues, such as access to secret files. He asked for Bird-Pollan's opinion about the most important thing that the ad hoc Committee recommended, which President Capilouto did not subsequently recommend. Bird-Pollan expressed hesitancy in making that determination, noting that such a determination would likely be a matter of debate. Alexander asked for clarification regarding the "secret files" comment and Jones, D. said that he was referring to an investigative file regarding accusations that would not be acted upon, but would still exist. Alexander said that there are files that include information received, which did not include a complaint or investigation. She said that those files still are maintained in her office and is the only such record. She said the only person outside of her office who could access the file would be the person involved in the debate – if Jane Doe made a complaint, Jane Doe was allowed to access it. Jones, D. asked if the person about whom the complaint was made could see the file. Bird-Pollan stated that while a provision to that effect was a recommendation from the ad hoc Committee, it was not part of the proposed changes to AR 6:2. The Chair ruled the question out of order, due to other senators waiting to have their questions answered.

Whitaker, M. (AS) asked why visitors were removed from the scope of the regulation. Bird-Pollan opined that the inclusion of visitors might have been an overreach from the beginning; it would be challenging to enforce a UK regulation against someone who happened to be visiting campus. Alexander said she had no additional insights.

The Chair asked if there were any other senators who had not yet spoken but wished to do so. Seeing no hands raised by senators who had yet to speak, the Chair called on Tagavi (EN). Tagavi commented and objected to the use of the term "or appropriate sanction." Kearney (ME) said he tried to retrieve information regarding his case from Alexander's predecessor and he was told that he could not access the files because they were prepared for General Counsel Thro, so he would need to visit Legal Counsel to access files related to his [Kearney's] case. Kearney added that if it was not in his "personnel file," he was not allowed to access it. He asked if that sort of process had changed via the revised regulation, i.e. if the accused had any rights to review notes from UK's IEEO office. Bird-Pollan (LA) thought the accused still would not have that right. Alexander said that what respondents can access is the same for complainants. If a case is going to a hearing, Alexander said that an investigative report is written, which contains all the relevant information that was gathered, whether exculpatory and inculpatory information, including summaries of meetings with witnesses.

Brion (EN) said she was concerned about information that Alexander's office may have, which did not lead to a hearing. She asked if there were any plans to purge that sort of information, which would be secret to the respondent. Brion said she assumed that some non-actionable information from one period of time could be used at a later date to establish a pattern of activity. She said she was most concerned about someone not knowing that a complaint was made against them. Alexander said that this issue was also discussed in-depth during ad hoc Committee meetings. She said that if IEEO conducts an investigation, the respondent will be notified. If there is a report but no action is taken, and a future instance leads to the possibility of a pattern, the first complaint would be investigated at the same time as the second complaint. Brion then asked, if a complaint was filed, would the respondent have the opportunity to view the original complaint and write a letter in response. Alexander responded that complaints were not often made in writing, but IEEO would provide the allegations in writing to the respondent in the investigative report. Jones, D. (ME) stated that that information was not included in the proposed changes to *AR 6:2*. Bird-Pollan said that that particular procedure was not part of the formal procedure described in the regulation.

The Chair told senators that the SC met the past Thursday and reviewed the proposed changes to *AR 6:2*. At that meeting, the SC moved to send the proposed revisions to *AR 6:2* to the Senate with no recommendation, but with the comment that the SC will encourage the Senate to endorse the proposed changes to *AR 6:2* if the four issues, below, were addressed as described, below.

1. The references to "victim" that must remain should be modified with the descriptor "alleged." [Regulation & Appendix: the word "victim" occurs throughout and some instances may be more appropriately described by using "complainant" or "complaining witness."]
2. Clarify that the Provost, Associate Provost for Student and Academic Life, and the Vice President for Human Resources may reject or amend a recommended sanction, but may not reject or amend a finding of responsible or a finding of not responsible by either the Sexual Misconduct Hearing Panel or the Sexual Misconduct Appeals Board. [Appendix, VIII.F.19, page 18]
3. Clarify that the entirety of the regulation, including the appendix, will not be amended without first consulting faculty, staff, and students. [Appendix, XI, page 20]
4. Clarify that the college faculty representatives for the Sexual Misconduct Hearing Panel Pool are appointed by the dean after consultation with the faculty council. [Regulation, IV.U]

Jones, D. (ME) asked if was appropriate to begin debate and Parliamentarian Cross (CI) stated that a motion was needed. Whitaker, M. (AS) moved to endorse the revisions to *AR 6:2*, with the SC's questions of clarity. Cross asked for clarification of the motion and Whitaker, M. reworded his motion to **move** that the Senate endorse the revisions to *AR 6:2* if the four specific changes [above] are addressed. Bird-Pollan (LA) **seconded**.

Grossman (AS) stated that after discussing point number two with General Counsel Thro, it was Thro's assertion that the language already prohibited rejecting a finding of responsible or not responsible. Tagavi (EN) said he had three points to make; 1. The word "victim" is not used by the federal government on the Title IX web page; the Provost could increase or decrease the sanctions recommended by the hearing panel, even though the Provost would not be privy to the panel's

deliberations, which was not acceptable; and 3. The use of “appropriate,” which occurs multiple times in regards to describe sanctions, was too vague to be useful.

Jones, D. (ME) concurred with Tagavi’s comments. Jones, D. also expressed concern about what the scope of “suspension” includes. If a letter informs someone that the individual was suspended and ordered to not have any contact with any student, staff, or faculty member, it was not clear what, exactly, was prohibited. Was the person prohibited from speaking with a UK colleague outside of the work environment? Jones, D. asserted that at one time there was the possibility for appealing an unreasonable sanction to the Senate's Advisory Committee on Privilege and Tenure (SACPT), but there was nothing about that in the regulation. Grossman (AS) concurred with what Jones, D. stated, but added that the SC determined that even in the absence of such explicit language, a faculty member could still appeal to the SACPT.

Eckman (CI) asked why clause number two [above] included a list of names; the Chair replied that the Provost would be involved if the respondent was a faculty member; the Associate Provost for Student and Academic Life would be involved if the respondent was a student, and the Vice President for Human Resources would be involved if the respondent was a staff member. Both Alexander and Bird-Pollan (LA) concurred with the Chair’s explanation.

Bird-Pollan (LA) spoke in favor of the motion overall, but stated that she would have preferred endorsement with a request that leadership consider the four caveats [above] instead of endorsement with a requirement to address the caveats. She said that the federal Department of Education might provide additional guidance in the future and she wanted faculty to be included in any future changes. She acknowledged that there were other changes she would have liked to see and that she did wish that leadership had accepted all of the ad hoc Committee’s recommendations, but that had never been a likely outcome. She opined that the proposed revisions to AR 6:2 were a genuine improvement over the existing policy. She responded to the query from Jones, D. earlier in the meeting about the most important thing that the ad hoc Committee recommended, which President Capilouto did not subsequently recommend. Bird-Pollan said that the ad hoc Committee recommended importing all of the procedures from AR 6:2 into AR 6:1 (“Policy on Discrimination and Harassment”), although not seeing any proposed changes to AR 6:1 did not necessarily mean that there was no intent to add the procedures to AR 6:1. Bird-Pollan then **moved** to amend the motion so that it not be contingent upon adoption, but rather that endorsement would include a request that senior leadership consider the four points [above]. Schroeder (ED) **seconded**.

Farrell (FA) asked why the interim remedies included within [proposed changes version] Appendix IV.B (“Interim Remedies during the Investigative Process”). Tagavi (EN) objected to the question, stating that it was not related to the amendment. Farrell stated that his question was about the substance of the proposal. Parliamentarian Cross (CI) stated that the question was in order. Alexander replied that the remedies were typically applicable to both parties, a sort of no-contact order that both parties must comply with. She said the language there was not intended to have any implication in due process. Farrell suggested that the “other appropriate remedies” opened the door to any sort of remedy, which Tagavi had complained about previously in the meeting. Farrell said that if an interim remedy was not appealable, it seemed as though UK was prejudiced against anyone who wants to appeal; someone who felt prejudiced by a decision would not have the right to be heard. Bird-Pollan said that she did not want to debate that section, since she was not procedurally authorized to do so, but commented that the rationale for “other appropriate remedies” was rooted in the legal principle of “Ejusdem generis,” which implies remedies “of the same kind.”

Grossman (AS) wondered if the interim measures were not appealable because the entire process had to be conducted within 60 days, per the federal government. Because the remedies are intended to be in place for such a short time, it did not make sense to have to deal with both an appeal of an interim sanction while at the same time trying to schedule a meeting of the hearing panel. Kearney (ME) suggested that the issue had been discussed sufficiently and shortly thereafter a **vote** was taken on the motion to amend the motion so that the Senate endorse the proposed changes to *Administrative Regulations 6:2* ("Policy and Procedures for Addressing and Resolving Allegations of Sexual Assault, Stalking, Dating Violence, and Domestic Violence") with the recommendation that senior leadership consider the four points [above]. The motion **passed** with 50 in favor, nine opposed, and four abstained.

Tagavi (AS) **moved** to amend the language of the second consideration ["Clarify that the Provost, Associate Provost for Student and Academic Life, and the Vice President for Human Resources may reject or amend a recommended sanction, but may not reject or amend a finding of responsible or a finding of not responsible by either the Sexual Misconduct Hearing Panel or the Sexual Misconduct Appeals Board."] so that the individuals named would also be prohibited from altering sanctions. Blonder **seconded**.

Grossman (AS) spoke against the proposed amendment, stating that the purpose of allowing the Provost and others the flexibility to change penalties is to ensure that penalties recommended by different appeals boards in different cases are similar with respect to the severity of sanctions. Grossman supported allowing that freedom to those named in clause number two. Tagavi (EN) said he would accept a friendly amendment to clarify that the flexibility was only to ensure standardization of sanctions. Bird-Pollan (LA) also spoke against the motion and said that in addition to what Grossman suggested, another reason to allow some latitude in determining sanctions was that the person instituting the sanction might be aware of mitigating circumstances of which the appeals board or hearing panel were unaware. She said that in other circumstances, it might be the case that a recommended sanction was unreasonable. Bird-Pollan asserted that the regulation required a lot of trust that the people in positions to make decisions were using good judgement, which was a reality about most procedures, including the justice system at large.

There being no further comments on Tagavi's proposed amendment, the Chair called for a **vote**. The motion **failed** by show of hands with three in favor and a vast majority opposed. The Chair stated that discussion would return to the amended motion ["endorse the proposed changes to *Administrative Regulations 6:2* ("Policy and Procedures for Addressing and Resolving Allegations of Sexual Assault, Stalking, Dating Violence, and Domestic Violence") with the recommendation that senior leadership consider the four points [above].] There were a handful of additional comments.

A **vote** by show of hands was taken on the motion that the Senate endorse the proposed changes to *Administrative Regulations 6:2* ("Policy and Procedures for Addressing and Resolving Allegations of Sexual Assault, Stalking, Dating Violence, and Domestic Violence") with the recommendation that senior leadership consider the four points: 1. The references to "victim" that must remain should be modified with the descriptor "alleged." [Regulation & Appendix: the word "victim" occurs throughout and some instances may be more appropriately described by using "complainant" or "complaining witness."]; 2. Clarify that the Provost, Associate Provost for Student and Academic Life, and the Vice President for Human Resources may reject or amend a recommended sanction, but may not reject or amend a finding of responsible or a finding of not responsible by either the Sexual Misconduct Hearing Panel or the Sexual Misconduct Appeals Board. [Appendix, VIII.F.19, page 18]; 3. Clarify that the entirety of the

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regulation, including the appendix, will not be amended without first consulting faculty, staff, and students. [Appendix, XI, page 20]; and 4. Clarify that the college faculty representatives for the Sexual Misconduct Hearing Panel Pool are appointed by the dean after consultation with the faculty council. [Regulation, IV.U]. The motion **passed** with a vast majority in favor (approximately 43 senators) and two opposed.

6. Items from the Floor (Time Permitting)

The Chair performed the ceremonial “passing of the gavel” to incoming chair Bird-Pollan.

Due to the mass exodus of senators, the meeting was adjourned at 5:05 pm,

Respectfully submitted by Katherine M. McCormick,
Senate Council Chair

Absences: Agbali; Allaire; Arnett; Atwood; Bailey; Beck; Birdwhistell; Blackwell*; Brady; Brennen; Capilouto; Cassis; Caudill; Chaudhary*; Cheng; Childress; Cofield; Collins; Couti; Cox; Danner; DiPaola; Dobson; D’Orazio; Dziubla; English*; Escobar; Feist-Price; Fernandez*; Fields; Firey*; Flaherty; Geneve*; Gent; Giancarlo; Griffin; Gunasena; Guy; Holloway; Hustedde; Iocono; Jackson; Kellum; Kyrkanides; Lee-Post*; Lovan; Mardini; Marr; Martin*; McClure; McCormick*; McGillis; Mitchell; Morey; Murray; O’Hair; O’Neil; Pakath*; Regard; Richey; Scaggs; Schroeder; Sheff; Skinner; Stallins; Stevens*; Sudharshan; Vail ; Vernon; Vines; Vosevich; Wasilkowski*; Wilson; Wilson; Witt; Wood; Woodrum*; Woods; Zadeh; and Zhang.

Invited guests present: Martha Alexander; Kim Anderson; and Anna Bosch.

Prepared by Sheila Brothers on June 7, 2018.

* Denotes an explained absence.