**Senate Rules and Elections Committee**

**Nov. 19, 2015**

**Wood (Chair), Jones (Secretary), Bird-Pollan, Brown,**

**Grossman, McGillis, Tagavi**

**1. Report from Subcommittee on Elections**

Jones reported that there were currently ongoing the processes of first round nomination of candidates for new members to the Senate Council (deadline noon Nov. 23) and of nominations of candidates for the Senate Council Chair position (deadline noon Nov. 20). Nominations for SC Vice Chair are scheduled to be solicited next week.

**2. College of Law course/program approval process**

The SREC discussed and reconfirmed the process established in the Senate Rules for approval of new courses/programs and changes thereto from the College of Law. Currently, the JD is uniquely the only degree designated by CPE as a 'professional' degree that is not in a health-related discipline. Intramurally, the College of Law Rules prescribe that changes to the curriculum arise from a curriculum committee, and the College Faculty body as a whole renders final college-level approval. The SREC interpreted and unanimously directed that the following interpretation will be inserted at the end SR 3.1.5.D as follows:

**D.** The College of Law Faculty Council will shall establish criteria that ensure that the progression through the law degree is marked by increasing levels of rigor and complexity.

The approved criteria shall be posted on the web site of each Council, as well as on the University Senate web site for curricular proposals and forms.

\* After the College of Law faculty approves, pursuant to its established Rules, a proposal concerning a new course (SR 3.3 below), a change to a course (SR 3.3 below), or a change to an existing degree (SR 3.2 below), the College submits the proposal directly to the Senate Council for 10-day posting (SR 3.2.3.C.2; SR 3.3.3.D.1). Faculty-approved proposals concerning new degrees to be housed in the College of Law are submitted by that college directly to the Senate Council for processing through the Senate, pursuant to SR 3.2.3.C.1.a

**3. Change to SR 7.2.2 Concerning Student Access to FERPA Records**

The SREC unanimously approved the following as the final editing to the FERPA compliance policy in SR 7.2.2 that was approved at the November 9, 2015 University Senate meeting.

~~Return to, discuss with, or m~~Make available to students all papers, quizzes and examinations within a reasonable period of time.1 If any of the records mentioned above are not returned to the students, they shall be retained by the instructor until 180 days subsequent to the conclusion of the academic term in which the problem occurred. In addition, student records and grading policy procedures including roll books, syllabi and attendance records (if applicable)--or copies of this information--shall be on file with the instructor or the department office whenever the instructor will no longer be available. [US: 10/16/89; 11/09/2015]

1 Students and instructors may contact the UK Office of Distance Learning Programs for advice about sharing student records remotely and securely.

\* In accordance with FERPA requirements any student (including postdoctoral scholars/fellow; and clinical residents/fellows) must be allowed to inspect and review any educational record pertaining to that student. Private notes written by an instructor that are not shared with any other person nor placed in the student's file are not educational records within the meaning of SR 7.2.2. [SREC: ~~DATE~~ 11/19/2015]

Give final examinations in accordance with procedures approved in Section 5.2.4.7.

**4. Renumbering the Senate Rules (per Grossman Style)**

The SREC unanimously directed that Chair Wood shall contact the Senate Council Office to draft an incorporation into the Senate Rules of all Senate actions from Oct 2014 to present. The SREC will then use that as a template to renumber the Rules per the style suggested by Grossman.

The SREC unanimously also requested that a standing practice be begun in which

(a) after each Senate meeting, the Senate Council Office will post each action taken by the Senate to change the Senate Rules on the Senate Rules web page

(b) once a year, the Senate Council Office will prepare a draft new version of the Senate Rules incorporating each of the above Senate actions

(c) the SREC will then render final codification/numbering to the draft Senate Rules

The SREC also unanimously requested that an archive be posted at the University Senate Rules web page of each official prior posted version of the full University Senate Rules, including each prior version that is currently being archived electronically within the Senate Council Office.

**5. UAB and Sexual Misconduct Allegations (AR 6:2)**

Wood reviewed the history of release of AR 6:2 and the University's policies on issuing Administrative Regulations.

According to [AR 1:6](http://www.uky.edu/regs/files/ar/ar1-6.pdf) and its associated official [flow chart](http://www.uky.edu/regs/files/AR%20Process%20Flow%20Chart.pdf) new Administrative Regulations or changes to Administrative Regulations are vetted through a Regulations Review [Committee](http://www.uky.edu/regs/committee.htm), of which the University Senate Council Chair is a member. According to AR 1:6 and the flow chart, the process of review before the President approves and promulgates new or amended Administrative Regulations includes obtaining "*Stakeholder Feedback*" on a "*draft*" of the regulation prepared by the Regulations Review Committee. The identified stakeholders include "*University Senate, Staff Senate, SGA Deans, other affected UK units."* The only exception provide by AR 1:6 is for the President to promulgate an "interim" Administrative Regulation for six months, when circumstances make it urgent to issue the AR.

According to the Administrative Regulation 6:2, the President issued on September 30, 2014 an "interim" AR 6:2 on "Policy on Sexual Assault, Stalking, Dating Violence, and Domestic Violence." Then, on December 3, 2014, the President issued a 'regular' AR 6:2 that contains provisions impacting faculty and the University Senate's role in academic degrees (See Footnote \* below). However, there is no record that a "draft" of "Administrative Regulation 6:2" from the Regulations Review Committee was submitted to the University Senate or to the University Senate Council to obtain the feedback of the "University Senate" before promulgation. Nor is there a record in the University Senate Council minutes that the Senate Council prior to December 3, 2014 was even informed, formally or informally, that a 'regular' version of AR 6:2 had been drafted by the Regulations Review Committee for approval by the President. Subsequent to the President having approved AR 6:2 on Dec. 3, 2014 as a 'regular' Administrative Regulation to supercede the Sept. 30, 2014 'interim' regulation, General Counsel Bill Thro at the May 2015 Board of Trustees meeting characterized to the Board that the regulation in effect was an "interim" regulation. (See footnote \*\* below)

Then, the President issued another revision of AR 6:2, effective June 19, 2015, that also added, as an appendix to AR 6:2, new procedures and policies

"that apply to University faculty, staff and students. Allegations relating to AR 6:1 Policy on Discrimination and Harassment are normally adjudicated under the Code of Student Conduct for students, Human Resources Policy and Procedure for staff, and the **Faculty Disciplinary Policy for faculty**."

and

"VIII. Appeals to the University Sexual Misconduct Appeals Board (SMAD)

"… For allegations involving students the SMAB serves in place of the **University Appeals Board**." (emphasis added here)

The SREC expressed concern that the AR contradicts the higher Board of Trustees GR XI that prescribes student access to the UAB for final decision of all nonacademic and academic student appeals. That UAB is subject to procedures prescribed by the University Senate. However, again, there is no record that a "draft" of the June 19, 2015 revision to "Administrative Regulation 6:2" from the Regulations Review Committee was submitted to the University Senate or to the University Senate Council for feedback before promulgation. Nor is there a record in the University Senate Council minutes that the Senate Council was even informed, formally or informally, that a revision to the Dec. 13, 2015 AR 6:2 had been officially drafted by the Regulations Review Committee for approval by the President. The SREC also noted that the promulgated June 19, 2015 version of AR 6:2 references a "Faculty Disciplinary Policy" that does not exist.

Wood noted that during spring 2015 the University Senate had provided feedback to the President on a Governing Regulation (to be approved by the Board of Trustees) concerning Faculty Disciplinary Policy and she directly asked the President at the Oct 2015 Senate meeting as to the status of that document. Wood noted that the President did not provide a substantive response to her question and the President did not use the occasion to draw the University Senate's attention to the June 19, 2015-effective AR 6:2 that he had promulgated without Senate feedback.(See Footnote \*\*\* below)

The SREC directed that Chair Wood, Jones and Bird-Pollan shall draft a letter drawing the above circumstances to the attention of the Senate Council. The letter shall be circulated to the SREC for edit/approval. The letter shall include the points that

(a) under the published procedures for revising ARs, the University Senate is a "stakeholder" from whom it is required that feedback will be solicited on the draft version of the revised AR that is prepared by the Regulations Review Committee (RRC),

(b) the University Senate was not solicited for this feedback for either the Dec. 13, 2014 or the June 19, 2015 draft revisions prepared by the RRC.

(c) substantive policies impacting the faculty and University Senate are contained in AR 6:2 that were not properly vetted through the University Senate for feedback, including that AR 6:2 refers to a nonexistent "Faculty Disciplinary Policy" and that AR 6:2 appears to violate GR XI concerning student access to the University Appeals Board that operates in accordance with University Senate Rules.

**6. CATS Survey**

Wood drew attention that many students had been required this past spring to answer questions in a "CATS Survey" under the threat that a student would be blocked from priority registration until the student completed the survey. Wood noted the statistical issues with validity of a "forced questionnaire." Wood presented a long list she received from University Registrar Don Witt of various nonacademic circumstances that can result blocking priority registration of a student. This led to much discussion as to what is the source of authority for promulgation of such a list, what are the specific definitions of those circumstances, and by whose decision and what process do circumstances become added to that list. The SREC expressed concern that timely student academic progress, and even timely attainment of a degree, could be unduly impeded by a nonacademic circumstance on this list that an administrator deems applies to a student. The SREC directed Wood to contact appropriate administrators to obtain information as to what is the right and mechanism of a student to appeal when such a circumstance is administratively applied to the student. The SREC also directed Wood to determine whether the CATS Survey requirement had been uniformly imposed on all University students.

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\*Provisions of this 'regular' AR 6:2 issued Dec. 3, 2014 included:

"VII. Corrective Actions and Disciplinary Procedures

"A. For students, the University utilizes the processes outlined in the Code of Student Conduct. For **faculty** and staff employees, the University utilizes the processes outline in the Governing Regulations and Administrative Regulations, Human Resources Policies and Procedures and other applicable University policy…" (emphasis added here)

"B. Possible sanctions for students are in accordance with the Code of Student Conduct and include disciplinary probation, counseling assessment, social restrictions, social suspension, suspension, dismissal, revocation of admission, or revocation of a degree. A recommended sanction of revocation of a degree **shall be referred to the Board of Trustees for final action**. (See KRS 164.240)" … Possible sanctions for **faculty** and staff are in accordance with applicable Governing Regulations, Administrative Regulations, and Human Resources Policies and Procedures and include suspension, counseling, or termination of employment." (emphases added here)

The SREC noted that the above provisions directly impact the faculty as individual employees, and impact the procedures promulgated by the Board of Trustees and University Senate on the award or revocation of a degree. In fact, the above provision literally states that an administrative process for a nonacademic offense that recommends revocation of an academic degree "shall" be forwarded to the Board of Trustees, with no express role acknowledged for the University Senate concerning the revocation of that academic degree.

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\*\*"Secretary Brothers asked what form the sexual harassment policy would take. Mr. Thro advised that the present form, required by the federal government, **had been in place as an interim** Administrative Regulation (AR) since October 2014. He offered that unless the Board of Trustees decides otherwise, it will become an AR making it applicable to both students and employees." BoT [Minutes](http://www.uky.edu/Trustees/minutes/2015/may/minutes.pdf) **May 8** 2015 (emphases added here)

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\*\*\*Specifically, according to the official University Senate transcript:

WOOD: President Capilouto, last spring this body, at your request, passed a faculty disciplinary document. One of the things that you just stressed was to respect the process by which decisions in these types of situations are actually made. I want to focus on the due process, as did that document. What is the status of that document

and how would -- how have -- is your administration moving to actually respect, strengthen, and protect the academic privileges of this faculty?

CAPILOUTO: Now in terms of our disciplinary policy, this wasn't a fun exercise, but we all learned from and I think we can all look at it with fresh eyes. I certainly am. I look forward to working you and others to do so.