

Senate Council
January 23, 2017

The Senate Council met in regular session at 3 pm in 103 Main Building on Monday, January 23, 2017. Below is a record of what transpired. All votes were taken via a show of hand unless indicated otherwise.

Senate Council Chair Katherine McCormick called the Senate Council (SC) meeting to order at 3:00 pm. The Chair suggested everyone in the room introduce themselves for the benefit of the new SC members present. After introductions, the Chair suggested moving to agenda item number two; there were no objections.

2. Bill Swinford – Kentucky Legislative Update

The Chair explained that she invited Swinford to share a legislative update with SC members, as many SC members have expressed interest in what is happening in Frankfort. Guest Bill Swinford (President's chief of staff) began by giving SC members a general overview of how UK monitors and reviews pending legislation. He offered some general information about House Bill (HB) 127 (related to free speech) and Senate Bill (SB) 107 (related to university governing boards). He reiterated that because both bills were in their nascent stages and future changes were likely, it was too soon for the University to have a formal opinion about them. There were a variety of questions from SC members.

Cross asked if it would be politically wise for the SC to pass a resolution in support of or against pending legislation; Swinford stated that it was up to SC members as to whether or not to pass any such resolution.

1. Minutes from November 28 and December 5 and December 19 and Announcements

The Chair said that she had received an editorial change to the minutes from December 19. There being **no objections**, the minutes from November 28, December 5, and December 19 were **approved by unanimous consent**.

The Chair detailed how the SC's nominees for the blue-ribbon Committee on Graduate Education and the Graduate School (CGEGS) were ultimately chosen and said the charge to the CGEGS would be sent to SC members soon. She asked Lauersdorf (chair of SRGEC and member of CGEGS) to brief SC members on the prior week's meeting between Stamats and the blue-ribbon Committee on Graduate Education and the Graduate School (CGEGS), as well as the meeting between Stamats and the Senate's Research and Graduate Education Committee (SRGEC). Lauersdorf suggested the charge of the CGEGS also be sent to SC members and the Chair was amenable to this suggestion.

There were a number of additional announcements.

- The Chair reported that she met with the Senate's UK Core Education Committee (SUKCEC) earlier in the day and sat in on their continuing deliberations and work on how UK Core might be more responsive to issues of race and diversity. She noted that "disability" would also be included as part of the discussion.
- The prior week the Chair participated in the airport interviews for the new position of associate provost for student and academic life. She said she would ask Provost Tim Tracy for an opportunity for SC to chat with the final candidates when they are brought to campus.
- The search for a permanent vice president for institutional diversity was reopened and continues.

- There will soon be a job posted for the vacant position in the SC office; the Chair said she hoped to fill the vacancy soon.
- There are about 75 courses remaining in eCATS, the Chair asked SC members to remind colleagues that if they had proposals still languishing in the college, they needed to move them along. Otherwise, they will have to resubmit in Curriculumlog.
- The Provost had called a meeting with Chief Information Officer Brian Nichols and campus staff responsible for data (collection, analysis, etc.) to determine data responsibility and the veracity of different types of data reported by UK. Due to an illness, the meeting was postponed and will be rescheduled.
- Honors changes are moving forward – the Chair said that she and Bailey [chair of Senate's Academic Organization and Structure Committee] had a meeting scheduled for the following day with Phil Harling, who is serving as interim dean of the Honors College. There were some simple issues that could easily be dealt with, but some issues, such as the employment of lecturers, which would require more substantive discussion.
- The ad hoc Committee on AR 6:2, chaired by Bird-Pollan, continues to move forward. The Chair explained that the representative of staff employees on the Committee had stepped down and there was a hope the member could be replaced soon.

Lauersdorf added that a graduate student from Rehabilitation Counseling would be the student member of the SC's the new ad hoc Committee on Technology. The Chair commented it was her understanding that Brian Nichols, UK's chief information officer, was putting together a strategic plan for his unit; she commented that she appreciated him including a Senate voice, as well as the opportunity to collaborate with him.

3. Committee Reports

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

i. Proposed New Graduate Certificate in Engineering in Healthcare

Schroeder, chair of the Senate's Academic Programs Committee (SAPC), explained the proposal. There were a few questions from SC members. The Chair said that the **motion** from the SAPC was a recommendation to approve the establishment of a new Graduate Certificate in Engineering in Healthcare, in the F. Joseph Halcomb, III, M. D. Department of Biomedical Engineering within the College of Engineering. Because the **motion** came from committee, no **second** was required. A **vote** was taken and the motion **passed** with none opposed.

b. Senate's Rules and Elections Committee (SREC) – Joan Mazur and Davy Jones, Co-Chairs

i. Undergraduate Education Reorganization and Election Apportionment Activities

Mazur, co-chair of the Senate's Rules and Elections Committee (SREC), explained the three recent issues (pertaining to the Provost's office reorganization of Undergraduate Education) that intersected with the *Senate Rules*. The first issue she described related to Senate election apportionment activities – apportionment involves a formula that includes a college's number of faculty and number of students. The shift to assign undeclared students to a variety of undergraduate colleges is ongoing but there are still some undeclared students not in a college – the lack of final placement in a college will affect the apportionment exercise.

The Chair introduced Adrienne McMahan, interim assistant provost for student and academic support, and explained that it was McMahan's responsibility to ensure students are moved from central advising into individual colleges. Guest McMahan explained to SC members the process undertaken thus far, as well as what remained to be done. She said there were originally almost 2,000 undeclared students not in a college and about 890 students remained as undeclared; she and others are continuing to work with those students to find a college home, with the goal of having all undeclared students placed in a college by February 24. In response to a comment from Wood, McMahan said that undeclared students were not automatically assigned to the College of Arts and Sciences, in part due to some concerns from other colleges.

ii. Undergraduate Education Reorganization and College Suspensions

iii. Undergraduate Education Reorganization and Advising "Undeclared Major" Students

The next situation Mazur described pertained to the new policy of assigning all students to a college. If a college academically suspends a student, does the college have the authority to move the student to another college? Mazur clarified that the SRs clearly state that a student must be actively involved in any decision to change colleges. There was also a similar, yet separate issue – if a college academically suspended a student, did that essentially suspend the student from the University? That sort of change would require University Senate approval but no such proposal had been put forward for review. She said that the SREC recommended that the Senate's Admissions and Academic Standards Committee (SAASC) review this issue as soon as possible. Mazur noted that 894 currently undeclared students not in a college could run into academic difficulties but there was not really a mechanism to work with them. McMahan replied that there are some colleges with their own suspension rules, although the majority followed the overall University's suspension rules. If a student was suspended from a college with their own suspension rules, if another college was willing to accept them, the student could move there. She said that students had been changing colleges as necessary.

Mazur noted that if a student needed to submit a retroactive withdrawal appeal for courses they took while being undeclared or when under the auspices of the [former] dean of undergraduate studies, there was no one in a position to serve as the dean for the student. {Retroactive withdrawal appeals are processed through the dean of the college the student was in when the student took the courses, which was not always the student's current dean.] McMahan responded that Phil Kraemer was currently serving in the role of interim associate provost for student and academic life and he could provide those services as necessary. Mazur clarified that while it was a technical point, according to the *Senate Rules* (SRs), a dean is responsible for performing those duties and the associate provost for student and academic life did not hold the position of dean. Wood said that because there was no dean of undergraduate studies, who by the SRs is responsible for those students, the University was liable for actions taken that were not sanctioned under the SRs. She said that issue could be easily rectified if there was an acting dean of undergraduate studies. Wood went on to say that if a student was suspended from a college, the student could not be forcibly placed somewhere else unless there was some official University policy that allowed a student to be homed in a default unit other than the college.

Wood asked where student went if the student did not check a box on the admissions form. McMahan replied that there were nine colleges on campus that had their own undeclared statuses, so a student would likely go to one of those colleges. Mazur said that the SAASC needed to review these two issues to help mitigate them, but another aspect involved the administrative issue of needing an acting dean for undergraduate education. Schroeder referred to past notes on the subject and thought that this

current academic year would be the flux year but would be mitigated for the incoming (fall 2017) class. Given that, the problem of undeclared students not homed in a college will likely be rectified well before the end of the current semester. Wood said that students who had been in an undeclared status in Undergraduate Education who might need to use the retroactive withdrawal appeals process would still be in a problem situation because they were undeclared in Undergraduate Education when they took the courses and there would still not be any dean of Undergraduate Education. Wood and Mazur indicated that there was nothing in the *SRs* or the role of the interim or future associate provost for student and academic life that gave the person in that role the ability to serve as the dean for the former Undergraduate Education. The Chair said that what she understood from the conversation was that the role and responsibilities of the associate provost for student and academic life needed to be better articulated and codified.

Wood **moved** that the SC ask the Chair to suggest to the Provost that he appoint an acting dean of undergraduate education and Cross **seconded**. A **vote** was taken and the motion **passed** with none opposed.

McMahan explained that the colleges with undergraduate students have hired about 17 new advisors with an eye for the new advisors to be in place by the time students enter into the colleges. A great deal of effort has gone into reaching out to students currently identified as undeclared and not in a college. The Chair added that there are about 15-20 specific references to Undergraduate Education and related roles and responsibilities in the *SRs* and it would be a good idea to think about the associated implications of the Undergraduate Education reorganization. McMahan clarified for a few SC members that there was currently no specified default mechanism that would take place if one of the 890 students did not select a college. McMahan said that on the admissions application, incoming students could choose one of the nine colleges that had an undeclared status, but there was not a plan to force students into any particular college, whether or not the deadline had passed. She said the sentiment was that it was better for students to make their own decisions, although there have had been, and will continue to be, many ways for students to receive notification of the need to pick a college, such as fairs, open houses, one-on-one discussions with advisors, and phone calls.

4. University Calendars

- a. 2017 - 2018 Calendar
- b. 2019 - 2020 Calendar, Tentative
- c. 2017 - 2018 Winter Intersession
- d. 2019 - 2020 Winter Intersession, Tentative
- e. 2017 - 2018 Dentistry
- f. 2019 - 2020 Dentistry, Tentative
- g. 2017 - 2018 Law
- h. 2018 Summer (four-week) Law
- i. 2018 Summer (eight-week) Law
- j. 2019 - 2020 Law, Tentative
- k. 2020 Summer (four-week) Law, Tentative
- l. 2020 Summer (eight-week) Law, Tentative
- m. 2017 - 2018 Medicine
- n. 2019 - 2020 Medicine, Tentative
- o. 2017 - 2018 Pharmacy
- p. 2019 - 2020 Pharmacy, Tentative

Mazur **moved** to approve the calendars a – p as listed on the SC agenda and Schroeder **seconded**. A **vote** was taken and the motion **passed** with none opposed.

5. Overview of Investigations Conducted by the Office of Institutional Equity and Equal Opportunity – Patty Bender, Associate Vice President for Institutional Equity and Deputy Legal Counsel T. Lynn Williamson

The Chair introduced the invited guests, Patty Bender (associate vice president for institutional equity), T. Lynn Williamson (deputy legal counsel), and Marcy Deaton (senior associate general counsel). Jay Blanton, UK's director of public relations, was also present. Guest Williamson began with a broad overview of due process which is the principle that an individual cannot be deprived of life, liberty or property with appropriate procedures. He stated that there are about eight or nine categories of due process and it depends on what process someone is in as to which of the categories are applicable. Not all categories are applicable to any one process; most are applicable in criminal and civil cases. UK is an agency and conducts administrative hearings and in UK's hearings, due process is defined as notice and the right to be heard. There are some additional considerations, according to the Supreme Court of the United States (SCOTUS) – SCOTUS has ruled that if the principle of due process is used the act of taking property must be tangible and has to be a property right to which one is entitled. There has to be a state statute or some common, acceptable grounds to conclude that someone has an entitlement. If a dean decides that a faculty member must teach a particular course, there is no entitlement to due process about teaching that course or the time of the course. If the dean decides that a faculty member should no longer be an employee, due process does come into play. Administrative decisions do not have due process or that entitlement. A fairly recent case from the Sixth Circuit U.S. Court of Appeals says that an individual is not entitled to due process from the University for being removed from the position of department chair, if the salary did not change. If the salary changed, that would affect the employee's property right and due process would be offered. In cases of revocation of tenure or termination, those do require due process. UK could probably terminate a lecturer who has been at UK for less than a semester without due process. Temporary employees are not entitled to due process, although regular staff employees are entitled to due process. If the University seeks to suspend a student, due process is likely required if the student will be suspended for more than 10 days. Williamson opined that UK probably offers more due process than is required by the Constitution of the United States or by SCOTUS. If an issue is on par with an oral or written warning for staff employees, no due process is given but putting an employee on probation, suspending them, or terminating them does require due process. In the student arena, a conversation with the dean or a written warning does not invoke due process, but suspension and termination and similar processes associated with academic offenses do require due process. He added that UK probably offered due process in more instances that was required by the United States Office of Civil Rights.

Grossman asked about the sort of information that was shared with an employee when there is an allegation. Williamson noted that Bender was involved in that more than he was, although he imagined that in most cases, the first discussion occurs while an investigator [from Bender's office] is trying to gain evidence and testimony and the exact charge may not be known, or maybe no charge comes of it. He said that before it was all over, the individual would be told exactly why they were being investigated.

Bender explained in general terms how an investigation is conducted and what information is shared with whom. When she receives a report of an incident, she looks at the concern, tries to find out who else was present, and at that point determines next steps – every case is different. At the point when she has enough questions to ask, she calls the accused person(s) and asks something along the lines of

“why do you think someone thought <details of the issue>.” In other words, she gathers as much information as possible before talking to the accused. Bender explained that she is obligated to respond using the preponderance of evidence standard, which means determining if there is more evidence that “it” was true than evidence that “it” was not true. If two people contradict each other’s statements, she will look at circumstances and review the details and severity of the situation. All situations are different, but she has to ensure that everyone is heard and that she has gathered as many facts as she can.

In response to a question from Schroeder, Bender said that it was her [Bender’s] office that makes a decision as to whether or not enough information is available to substantiate a decision, although it was very likely that she will have been in consultation with Deaton and/or Williamson prior to making that decision. Williamson added that Bender makes a recommendation to the appropriate senior leader (dean, director, etc.) and the senior leader makes the final decision. There are a few people in Bender’s office who conduct investigations; Williamson noted that a single investigation was likely conducted by a single person – there are certain investigators that work on certain types of cases.

Blonder asked if the accused employee was given the documentation that Bender collected, such as notes and interviews and other evidence. Bender said that she will walk through the issue with the accused and go over everything that was alleged and let the accused give their side of the story. She does write out her findings and gives that to the accused, but prior to that point any information shared with the accused employee is shared orally, only. In response to another question from Blonder, Bender stated that the information collected during an investigation did not go into an employee’s personnel file, but rather stayed in Bender’s office and was not shared. Williamson noted that an employee was entitled to review their personnel file, their benefits file in Human Resources, the faculty data file in the Provost’s area, as well as a departmental file. If the situation involves a faculty member and revocation of tenure, in that case the accused faculty member would get a hearing and would see the evidence. Bender added that the finding from her office was shared with the individual but the documentation itself would not be given to the accused. Cross asked if property-rights due process applied in the case of a faculty member who was awarded extra compensation and then had that extra compensation withdrawn as part of a disciplinary action. Guest Deaton expressed concern that the discussion was getting too close to particular cases.

A number of SC members were concerned that while a faculty member can see everything contained in their personnel record, the investigative record is a separate file that a faculty member is not given complete access to. Bender noted that a lot of the information in an investigative file is shared verbally with an alleged perpetrator (which only sometimes includes sharing who said what); the file itself is never shared or given. Wood opined that there is a presumption that an accused person could face their accuser; Williamson said that that was not generally considered to be a right, unless employment termination was involved, in which case the accused absolutely had the right to confront their accuser. There was additional discussion among those present. Williamson added that any decision at UK could be appealed – the *Governing Regulations* give that right for an appeal process, but an appeal process does not always take the form of a hearing process adjudicated by a judicial board. Appeals would go up the traditional chain of command in any given unit. Blonder asked how a local newspaper reporter was able to access details of the investigation when the accused was not afforded the same rights. Blanton clarified that the reporter did not receive the investigative file, but rather was able to access the final decision letter, which was subject to KY’s Open Records laws.

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As discussion wound down, SC members thanked Bender, Williamson, and Deaton for attending and expressed appreciation for the opportunity to learn more about the investigative process.

Given the time, McGillis **moved** to adjourn and Mazur **seconded**. A **vote** was taken and the motion **passed** with none opposed. The meeting was adjourned at 5:14 pm.

Respectfully submitted by Katherine M. McCormick,
Senate Council Chair

SC members present: Blonder, Bird-Pollan, Botts, Grossman, Cross, Lauersdorf, Mazur, McGillis, Mills, Reid, Schroeder, and Wood.

Invited guests present: Patty Bender, Marcy Deaton, Adrienne McMahan, David Pienkowski, and Bill Swinford.

Prepared by Sheila Brothers on Thursday, January 26, 2017.