

MEETING OF THE CIVIL SERVICE SENATE

THURSDAY, MAY 11, 2017

10:00 A.M. – 12:00 P.M.

**3-100 Mayo Auditorium--Twin Cities Campus
116 Kiehle Hall--Crookston Campus
175A Kirby Plaza--Duluth Campus
45 Humanities/Fine Arts Building--Morris Campus
Room 397--Rochester Campus**

This is a meeting of the Civil Service Senate. There are 38 voting members of the Civil Service Senate. A simple majority must be present for a quorum. Most actions require only a simple majority for approval. Actions requiring special majorities for approval are noted under each of those items.

**1. CIVIL SERVICE SENATE ORIENTATION
(15 minutes)**

**2. CIVIL SERVICE CONSULTATIVE COMMITTEE REPORT
(5 minutes)**

**3. CIVIL SERVICE CONSULTATIVE COMMITTEE
SUBCOMMITTEE REPORTS
(10 minutes)**

**4. ELECTION FOR 2016-17 CIVIL SERVICE CONSULTATIVE COMMITTEE
1 Open Seat from Duluth
1 Open Seat from Rochester
1 Open Seat from TC At-Large Area
1 Open Seat from TC Provost Area
1 Open Seat from TC Health Sciences Area
Action
(5 minutes)**

Only Civil Service senators are eligible to serve.

**5. ELECTION OF UNIVERSITY SENATE MEMBERS
1 Open Seat from Crookston
1 Open Seat from Duluth
1 Open Seat from Morris
1 Open Seat from Rochester
4 Open Seats from TC At-Large Area
6 Open Seats from TC Provost Area
6 Open Seats from TC Health Sciences Area
Action
(5 minutes)**

Only Civil Service senators are eligible to serve.

**6. ELECTION OF SENATE COMMITTEE ON COMMITTEES MEMBERS
(5 minutes)**

There are two civil service seats on the Senate Committee on Committees (ConC). Any civil service employee is eligible to serve.

**7. EQUITY, ACCESS, AND DIVERSITY COMMITTEE
Resolution on Privacy of Student’s Counseling and Medical Records
Action
(10 minutes)**

Resolution on Privacy of Student’s Counseling and Medical Records¹

Be it resolved that the Equity, Access, and Diversity Committee (EAD) acknowledges and endorses the internal practice, outlined below, established by the Office of General Counsel (OGC) related to the privacy of student counseling records:

Medical and counseling records will be used or disclosed for litigation between the student and the University only in limited circumstances, as described below. The University of Minnesota offers and encourages students to use on-campus medical services, including mental health services, and sexual assault counseling. Under federal law, campus counseling and medical records of students are not covered by the Health Insurance Portability and Accountability Act (“HIPAA”). Recognizing the sensitivity of medical and counseling records and to promote the full use of resources by students, the University applies the same privacy standard as HIPAA would in cases where litigation occurs between the institution and the student.

Specifically, when the University is involved in litigation with a student, the University will not share the medical or counseling records of that student with the University’s attorneys or with the courts unless the litigation relates directly to the medical or counseling treatment itself or the payment for that treatment, and even then will share only those records that are relevant and necessary to the litigation. For other litigation, the University’s attorneys will not access the student’s treatment records without first obtaining a court order or the student’s consent. This policy recognizes students’ reasonable expectation that their conversations with University medical professionals and counselors are confidential. This policy does not restrict the University’s attorneys from complying with litigation hold requirements.

Some examples:

1. If a student sues the University for malpractice related to the provision of medical or counseling services, records may be disclosed to University attorneys to the extent relevant and necessary to defend against the claim.

¹ A previous resolution on student records was adopted by the Equity, Access, and Diversity Committee on January 30, 2017 and subsequently adopted by several other committees. The proposed resolution noted here, drafted with the assistance of the Office of the General Counsel, is meant to replace the January resolution. The new resolution is faithful to the intent of the original while resolving a number of ambiguities. The new resolution will be submitted for consideration at the May 2017 meeting of the University Senate.

2. If a student brings a claim *unrelated* to the provision of medical or counseling services, records will *not* be disclosed to University attorneys except with the student's consent or a court order, even if the student is asserting emotional distress damages.

EAD acknowledges that although the above has been the Office of the General Counsel's practice, it has not previously been in writing. Putting the practice into writing and encouraging University counseling centers to include the information in their privacy statements allays the concerns raised about this issue by events at other institutions.

EAD asks the University Senate, and encourages the University administration, to likewise acknowledge and endorse this principle and these practice standards.

COMMENT:

This privacy issue came to the Committee's attention when a University of Oregon student sued the University for emotional distress caused by its alleged mishandling of her sexual assault case. Although the University found that three varsity basketball players had raped her and dismissed them from the University, the victim alleged that the University delayed the investigation to allow the players to finish the basketball season. In connection with the litigation, the University administration accessed her post-rape therapy records from the University's counseling center and provided them to the General Counsel's Office.

The University could access her records because students' campus counseling and medical records are not protected by the federal Health Insurance Portability and Accountability Act (HIPAA). Instead, the records are covered by the federal Family Educational Rights and Privacy Act (FERPA). FERPA allows a university to access a student's counseling and medical records, without a court order or subpoena, if the student or the student's parents sue the university. 20 U.S.C. § 1232g; 34 C.F.R. § 99.31(a)(9)(iii)(B).

In response to the University of Oregon case, the United States Department of Education issued a "Dear Colleague Letter" on this issue. It encourages higher education institutions to refrain from accessing students' counseling and medical records except in connection with litigation directly involving them. However, the Letter is not binding, it does not state that the University of Oregon acted improperly, and it does not flatly state that accessing the records must be limited to litigation involving them.

The University of Minnesota provides counseling and medical services to our students and encourages them to use those services. However, particularly for sensitive matters, students will not use those services or will not be candid with service providers if their privacy is not respected.

Endorsed by:

Academic Health Center Student Senate Consultative Committee (February 15, 2017)

Disabilities Issues Committee (March 22, 2017)

P&A Consultative Committee (March 22, 2017)

Faculty Affairs Committee (April 14, 2017)

Civil Service Consultative Committee (April 20, 2017)

**JEREMY JENKINS, CHAIR
EQUITY, ACCESS, AND DIVERSITY COMMITTEE**

8. SOCIAL CONCERNS COMMITTEE

**Resolution on Equal Opportunity and Title IX Training
Action
(10 minutes)**

Resolution on Equal Opportunity and Title IX Education

The University Senate recommends that all University employees be required to take an online or in-person course, administered by the Office of Equal Opportunity and Affirmative Action, on University equal opportunity and Title IX policies.

All employees who are currently working at the University, including full- time employees, part time employees, graduate and undergraduate student employees, and vendors working on campus who regularly supervise University employees, will be required to take the course within a specific and reasonable time frame after it is made available and widely publicized. Nonexempt employees, including students, will be authorized to take this course during work hours. New employees will have a set period of time after their start date to take the course. Shorter refresher modules, covering changes in policies and practices, will be offered and required every so many years, as changes warrant. EOAA or another appropriate University unit will monitor completion of the course, send reminder notices, and track the effectiveness of the course.

COMMENT:

The University of Minnesota is committed to providing an equitable work and learning environment that is free from discrimination and harassment. The Board of Regents' Equity, Diversity, Equal Opportunity, and Affirmative Action Policy prohibits discrimination and harassment on the basis of race, color, creed, religion, national origin, sex, age, marital status, disability, public assistance status, veteran status, sexual orientation, gender identity, and gender expression.²

Title IX is a federal statute that prohibits sex discrimination in education programs. Sex discrimination includes sexual harassment and sexual violence. University policies prohibit sexual harassment and all forms of sexual violence, including sexual assault, stalking, and relationship violence.³

The University of Minnesota's Office of Equal Opportunity and Affirmative Action (EOAA) was established to ensure that all University community members uphold federal and state civil rights laws and regulations, as well as University policies. EOAA provides education to University employees based on these laws and policies. However, this education is not mandatory. Accordingly, and based on continued concerns about campus climate and University safety, and to ensure that all university members uphold, are aware of, and have access to the protections of federal and state civil rights laws, the University Senate recommends that all University employees be required to take an online or in-person course, administered by EOAA or another appropriate University office, that would include the following content:

- Identifying and responding to discrimination, retaliation and nepotism;
- Identifying and responding to sexual harassment;
- Sexual assault, stalking and relationship violence policy;

² Board of Regents Equity, Diversity, Equal Opportunity, and Affirmative Action Policy
http://regents.umn.edu/sites/regents.umn.edu/files/policies/Equity_Diversity_EO_AA.pdf

³ Board of Regents Sexual Harassment
<http://regents.umn.edu/sites/regents.umn.edu/files/policies/SexHarassment.pdf>
Administrative Policy Sexual Assault, Stalking and Relationship Violence
<http://policy.umn.edu/operations/sexualassault>

- Reporting obligations for all employees;
- EOAA's role; and
- Resources for complainants and reporting⁴

The proposed required education is a synthesis of the most critical elements of University policies determined by EOAA. The offering would be approximately one hour in length. The in-person option will be offered subject to EOAA's or another teaching unit's capacity and scheduling availability.

Endorsed by:

Faculty Affairs Committee (February 14, 2017)

Civil Service Consultative Committee (March 23, 2017)

P&A Consultative Committee (April 19, 2017)

**MARK PEDELTY, CHAIR
SOCIAL CONCERNS COMMITTEE**

9. TOPICS FOR 2017-18

**Discussion
(30 minutes)**

10. OLD BUSINESS

11. NEW BUSINESS

12. ADJOURNMENT

⁴ The proposed training will also include information about the system campus Title IX Coordinators and reporting structures.