

UNIVERSITY OF NEW HAMPSHIRE  
2004-05 FACULTY SENATE

OCTOBER 11, 2004

MINUTES SUMMARY

I. Roll – The following senators were absent: Baldwin, Burger, Chang, Collins, Crepeau, Miller, Nagy, Smith, Tenczar, and Vangundy. Excused were Broussard, Carroll, Finkel, Kenefick, Krysiak, Laue and Schlenrich. A guest was Pat Gormley.

II. Communications from the chair – The senate chair said that Bob McGann, Director of Admissions, has announced that discussions will be held regularly on admissions activities, recruitment of underrepresented populations, and dialogue between campus constituencies. The meetings will be from 1:00 to 2:00 p.m. on 12/13 in MUB 207 and on 11/15, 1/24, 3/7, 4/11, and 5/30 in 203 MUB. A letter, signed by the provost and the Faculty Senate chair, has been sent to faculty members, asking them to communicate with their students and colleagues about responsible celebration after athletic events. Faculty who are applying for promotion or tenure are welcome to request from the Faculty Senate chair a letter about their service in the senate. In the past, the English Department did not use the standard course evaluation form; but the department has changed its policy and plans to use that form in the future.

III. Minutes – The minutes of the last Faculty Senate meeting were unanimously approved.

IV. Discriminatory Harassment Policy revisions – The Professional Standards Committee is a Faculty Senate committee with representatives elected from each school and college, and the vice chair of the senate serves as chair of this committee. **Some revisions to the UNH Harassment Policy were submitted to the Faculty Senate last year and referred to the PSC for review. The PSC considered the proposed revisions, made suggestions for modifications, and then voted unanimously to recommend that the Faculty Senate approve the latest draft. The draft now under consideration includes new language on academic freedom and says that a support person may accompany both the complainant and the accused and that malicious complaints should incur the same penalties as those for reprisals. David Richman, the PSC chair, moved on behalf of the PSC that the latest Discriminatory Harassment Policy revisions be approved by the senate.**

In response to a question, Pat Gormley confirmed that in the university administrative hearing process the accused does not have access to legal counsel and that commonly accepted rules of evidence for trials are also not in use. However, if the complaint were to go beyond the administrative hearing process for discipline, the procedures in the faculty contract would apply. A senator asked whether, if there were no finding of wrongdoing in the administrative hearing process, the action would be expunged from the record. Pat Gormley replied that the action would not be documented in the employee's personnel record but that the Affirmative Action Office would retain a record which would be deleted after five years if there were no recurring instance. She said that, if there were a second complaint, the first, unfounded complaint would not be part of the new issue. She added that these concerns are not at issue in the revisions recommended for acceptance today. A senator said that he has grave reservations that the protections that we regularly assume would not be present. Pat Gormley replied that the proposed revisions do not affect that and that her office could entertain proposals for subsequent change to the regulations. A professor asked if accused faculty members would be allowed to

avail themselves of representation the faculty union might provide; and Pat answered that the administrative investigation is not a union grievance proceeding and has different procedures. In the administrative hearing process, a support person is allowed who is a university employee or student, not an attorney, and not in charge of implementing the results of the hearing. A faculty member asked why the support person is restricted to UNH employees and students.

PSC Chair David Richman said that his committee only dealt at this time with the currently proposed revisions but that the committee could review those other issues later. A professor asked how the university could have a legal right to make these restrictions. Another senator asked who made the policy and when and also asked what is the interface with federal and state law. Pat Gormley said that the Discriminatory Harassment Policy is an administrative policy, that the on-line policy dates from 1996 or earlier, and that the policy brochure dates from 1997. Prior to that, there was a Sexual Harassment Policy. USNH still has only a Sexual Harassment Policy. She said that she believes the Discriminatory Harassment Policy has passed legal muster. The administrative hearing process is an investigative process rather than a court and is not at the level of proceedings where lawyers are appropriate. A professor said that he assumes that the administrative hearing process is an attempt at more informal resolution of the issue and that a faculty member could bypass that stage by refusing to participate without a lawyer. Pat Gormley replied that the university has both an informal and a formal process, that some actions may be taken in the department without the assistance of the Affirmative Action Office, and that resolution is attempted at the most informal level possible.

Records kept in the Affirmative Action Office are confidential. The summaries of any individual's statement to the investigator are available to the individual making the statement. Formal complaints are available to all sides. If there were a recommendation that required action, the person or office responsible for that action (such as a dean or department chair) would also have access to the record. In answer to a question about Miranda rights, Pat Gormley said that she gives the accused a copy of the policy first and also time to read and understand it. A professor expressed concern that repeated unfounded complaints might be used to build a case against an innocent person. Pat Gormley said that the PSC requested modifications, which were included in the latest draft, so that false complaints would be treated in the same way as retaliation. Thus the Affirmative Action Office would be required to investigate malicious complaints. David Richman confirmed that the clause against malicious complaints is contained in the version under consideration in the current senate motion. Pat Gormley said that a record of unfounded complaints would be kept and could be used later if a pattern of malicious complaints arose. Some complaints are considered unfounded but not malicious, for example if a discriminatory action did not reach the level needed to be considered discriminatory harassment. A senator asked how often complaints are raised and how often they are unfounded. Pat Gormley said that in 2003 there were twenty-five complaints and that several of them were unfounded. Some complaints are unfounded because they do not involve a protected category. Some complainants do not pursue the complaint through the process, and those complaints are also counted as unfounded. The statistics will soon be on the Affirmative Action Office web site.

The motion on the floor is to amend the policy with specific revisions. After those are voted on, a motion may be made to initiate a review of other issues in the policy. David Richman said that the Professional Standards Committee believes that the revisions in today's motion strengthen

and clarify the policy. **The original motion passed with seventeen ayes, six nays, and five abstentions.**

**Jeff Salloway moved and Stacy VanDeveer seconded that the Professional Standards Committee conduct a thorough review of the Discriminatory Harassment Policy, with special attention to the rights of the complainants and the accused.** David Richman asked that senators email him with their concerns and suggestions on these topics. A senator asked Pat Gormley if her office could provide to the Professional Standards Committee the relevant federal and state legislation. The Discriminatory Harassment Policy with the revisions just passed by the senate will be sent to the president for approval and then will be put on the web. **This motion passed with no nays and three abstentions.**

V. Student observer to the Student Affairs Committee of the Faculty Senate – **V. K. Mathur moved on behalf of the Faculty Senate’s Student Affairs Committee that a student observer be invited to all the committee’s meetings with the following stipulations: (1) the student would attend primarily as an observer; (2) the student could be recognized by the chair; (3) the same student should attend all meetings; (4) if that student is not able to communicate the Student Affairs Committee’s intentions and decisions to the Student Senate accurately, the committee could request that a different student attend the committee’s meetings; (5) minutes will be distributed to all committee members and the student; and (6) at the end of each meeting the committee will review the understanding of what has happened, to help reduce the chance of miscommunication. The student observer to this committee would be selected by the Student Senate,** as will a second student who will act as observer to the Faculty Senate meetings according to a motion passed in the 9/13/04 Faculty Senate meeting. **The current motion passed with no nays and one abstention.**

VI. Article III of the Faculty Senate Constitution – The Agenda Committee believes that it is the sense of the senate that Article III as currently constituted presents problems that may go beyond the concern to more fully enable UNH-Manchester faculty to participate in decision making. The Agenda Committee believes as well that Senator Savage's motion as currently constituted would not carry the two-thirds of the senate necessary to prevail. **David Richman on behalf of the Agenda Committee moved the formation of an ad-hoc committee to discuss the need for change to Article III. If it is determined that such change is warranted, the ad-hoc committee will then formulate a motion, to include its recommendations, and bring to the senate its motion regarding a possible change to Article III of the Faculty Senate Constitution. The senate acknowledges that passing this motion includes the possibility that the ad-hoc committee may decide, after consideration, not to present a motion to change Article III, in which case the committee will so report to the Faculty Senate. The motion passed with no nays and one abstention.** One of the members of the ad-hoc committee will be Terry Savage.

VII. Article 2B of the Faculty Senate Bylaws – **David Richman on behalf of the Agenda Committee moved that, since the Academic Computing Advisory Committee is defunct and has been supplanted by the Instructional Technology Committee, the reference, in article 2B of the Faculty Senate Bylaws, to the Academic Computing Advisory Committee should be changed to the Instructional Technology Committee.** A change to the constitution requires a two-thirds majority. **The motion passed unanimously.** The Senate meeting was adjourned.