



THE UNIVERSITY OF
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KNOXVILLE

Faculty Senate

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**UTK Faculty Senate Faculty Affairs Committee Report on Proposed Code of Student Conduct
Prepared by Jennifer Fowler, Chair, UTK Faculty Senate Faculty Affairs Committee**

This report was presented to the UTK Faculty Senate Executive Committee on September 6, 2016. The motion to approve the report and forward to Dr. Carilli was seconded and passed unanimously.

The Vice Chancellor of Student Life, Dr. Vincent Carilli requested that the Faculty Affairs Committee of the UTK Faculty Senate review and provide their opinion on a proposed change in the Code of Student Conduct Proposal.

Recap: "As a part of the Jane Doe sexual assault lawsuit settlement, the University is required to promulgate a change to the Proposed Student Code of Conduct involving the use of students on Conduct Boards that will hear sexual misconduct cases." The change to be considered is to change the composition of the Student Conduct Board from one composed of students, to one that has no current student members unless both parties agree to allow student members.

Documents that were considered included the following.

[Proposed Code of Student Conduct](#)

[Policy on Sexual Misconduct \(Section 5\)](#)

[Dear Colleague Letter](#) US Dept. of Education

Proposed Language Change for New Code (see Appendix to this document)

After review and discussion, the committee voted to accept or oppose the proposed change. The votes were as follows.

Votes in favor of change: 1

Votes opposed to change: 6

Votes opposed to the change, with qualifications: 2

Suggestions and Comments from Committee Members:

- Although the Office of Civil Rights of the U.S. Department of Education "discourages schools from allowing students to serve on hearing boards in cases involving allegations of sexual violence," I believe students can bring a valuable perspective not necessarily represented on boards comprised

solely of faculty and staff [U.S. Department of Education Office for Civil Rights, Questions and Answers on Title IX and Sexual Violence n.30 (Apr. 29, 2014)]. Therefore, I do not support a policy that generally excludes student participation on conduct panels that address allegations involving campus sexual violence provided students are properly trained to participate and there are safeguards in place to protect the confidentiality of information. Given these concerns, consideration should be given to permitting the complainant or respondent to have a panel comprised of no student members. Thus, instead of an “opt-in” feature (I.e., if you want students, you must request them), consider using an “opt-out” feature (I.e., students will be a part of your panel unless you affirmatively disapprove). That way, complainants or respondents who have concerns about the sufficiency of student training or the ability of the university to ensure that student members are not disclosing sensitive information among their peers, the particular parties could have the right to opt out of having student panel members.

- I agree that students should serve on the Student Conduct Board and hear cases of alleged sexual assault/misconduct so long as the ratio of males/females is 50/50. I would not want to be a female and have my case determined by a majority of males.
- Should language be added to suggest that if the victim or respondent have sound reasoning behind why he or she would oppose students, that there be some formal mechanism for hearing that reasoning and then making a determination?
- It would be better if our university engaged in programs to improve the culture of the campus, making clear that we support an open and safe environment. *A consistent message promoting respectful behavior toward other human beings could go a long way.*
- I would prefer we not engage in engineering a separate architecture of policies [composition of Student Conduct Board] for sexual behavior.
- I believe student representatives on the hearing board are an important element of student disciplinary hearings and cannot imagine a scenario where student participation on the disciplinary hearing board would not be valuable for obtaining an appropriate decision. In particular, singling out cases involving Sexual Misconduct, Relationship Violence, and/or Stalking where student participation on the Student Conduct Board would require consent of both the respondent and the complainant would seem to open up numerous legal issues (student participation on these boards should be uniformly applied to all student conduct cases).
- I can see sometimes, the victim wants to have confidentiality or privacy on the case. I am not sure if the student on the conduct board is required to keep everything confidential about the case.

Appendix – Proposed Language Change for the New Code of Student Conduct

As a part of the settlement of the UTK Title IX lawsuit, the legally binding agreement calls for the University to amend its Proposed Code of Conduct. The paragraph below is taken verbatim from the settlement agreement:

UTK will initiate a change to its student conduct rules to provide that current students will not be appointed to serve on student disciplinary hearing boards in cases involving allegations of sexual misconduct unless both the respondent and the complainant consent to having students appointed to serve on the board hearing their case. Plaintiffs recognize that UTK is required to promulgate certain proposed policy changes, including this change, in accordance with the rulemaking provisions of the Uniform Administrative Procedures Act (UAPA), the last step of which involves review by the Tennessee General Assembly's Joint Government Operations Committee. Provided that UTK initiates the rule change, non-implementation of the rule change will not be deemed a breach of this Agreement.

Given this requirement, it is recommended that the following paragraph be inserted into the Proposed Code of Conduct as an addition to Section VIII, Student Conduct Board, and Appeals:
Section 8.1.3

With regard to alleged violations of the Standard of Conduct, Section 4.7, Sexual Misconduct, Relationship Violence, and/or Stalking, current students will not be appointed to serve on the Student Conduct Board or any Appellate Board in cases involving allegations of sexual misconduct unless both the respondent and the complainant consent to having students appointed to serve on the board hearing their case.

Given this potential change, a re-numbering of current Sections 8.1.3, 8.1.4, and 8.1.5 will need to occur.