

March 15, 2013

Dear President Kelly, Provost Robinson, and Dean Lennihan,

Due to reports from students of extreme variations in program student representation, the Doctoral Students' Council respectfully requests clarification be provided to programs of The Graduate School and University Center (GC) regarding the application of GC governance, Robert's Rules of Order, Newly Revised, and New York State Open Meetings Law to Program Standing Committees.

Plenary

Currently, programs vary widely in their adherence to GC governance bylaws that impact Program Standing Committees. For example, some programs appoint students to committees, despite requirements that student representatives on these committees, "shall be chosen by means of an election by mail by the students in the program" (Bylaw 6.4D) (1). Further, even when students are elected members of committees, they are not always granted their equal right to voice and/or vote. In addition, students have been forbidden from discussing even the most basic of changes to curriculum with their constituents, defying both the basic premise of the principles of representative governance and the explicit wording of Bylaw 6.4D, which states that, "The students shall have responsibility through student representatives to the Executive Committee and the Standing Committees of each program to make known their views on the policies of the program." (1)

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Many programs lack transparency in their policy decision-making, and forego requirements that they make policy proposals available to students for an open discussion of issues that directly impact student interests. Often, committees do not conduct formal votes or keep formal agendas or minutes in accordance with Robert's Rules of Order, though Bylaw 3.2E requires that all procedures of program standing committees be, "governed by Robert's Rules of Order, Newly Revised," and Robert's Rules specifies that committees should agree upon an order of business for meetings that includes reading of minutes from the previous meeting. In addition to the importance of agendas and minutes to the provision of notice to the student body of key program policy changes that are scheduled for discussion, and the nature of these discussions (which would allow for students to voice their feelings on such policies via their student representatives in accordance with Bylaw 6.4D), such record of committee business is a crucial asset to institutional memory.

Of course, there are some topics which are not suitable for public discussion, particularly those involving the private information of students and faculty, or the contents of exams. Some programs attempt to exclude student representatives from these conversations due to concerns of confidentiality, despite the fact that these students are elected members of program standing committees and as such should participate in discussion on all issues. This is particularly problematic as student representatives serve as an important voice on the student perspective on a variety of issues, and in cases that involve specific students, may even be able to speak on behalf of the students in question. As is the case with students who work for the medical centers, registrars, bursars, and admissions departments of colleges and universities throughout the United States, privacy laws like the Family Educational Rights and Privacy Act (FERPA) require that confidentiality of this information be kept by student members of committees, not that student members be kept from hearing such information, even when the discussions pertain to faculty

appointment. Indeed, Bylaw 5.2 states that student members of the Executive Committee “have the right to participate in *all* discussions on matters of policy,” as well as all matters regarding, “individual candidates for appointment, reappointment, promotion, and tenure.”

Possibly the single best way to ensure that program policy discussions remain transparent to students of the Graduate School and University Center is the application of New York State Open Meetings Law (NYS-OML) to Program Standing Committees. CUNY has a history of case law supporting the application of NYS-OML to its policymaking bodies. For example, *Smith v. CUNY* (1999) and *Wallace v. CUNY* (2000) applied NYS-OML to the LaGuardia Community College Association and the University Student Senate, respectively, due to the fact that their policy decisions included expenditure of public monies. *Perez v. CUNY* (2006) applied NYS-OML to the Hostos Community College Senate due to the body’s performance of an essentially government function in its power to formulate policy recommendations in academic matters of a public college. It is the interpretation of CUNY’s Legal Affairs Office (2) that Perez would, by extension, also apply to the University Faculty Senate and all CUNY faculty senates.

NYS-OML states that,

It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy. The people must be able to remain informed if they are to retain control over those who are their public servants. It is the only climate under which the commonweal will prosper and enable the governmental process to operate for the benefit of those who created it.(3)

DSC holds that this rationale applies equally to Program Standing Committees, which are the initial step in the formulation of policy governing the curriculum, faculty appointments, and student admission to doctoral students of a public university, and involving the expenditure of public funds. We assert that the Program Standing Committees are “public bodies” under NYS-OML, which defines bodies that are subject to the legislation as entities “for which a quorum is required in order to conduct public business and which consists of two or more members, performing a governmental function for the state or for an agency or department thereof... or committee or subcommittee or other similar body of such public body.” (3) While CUNY’s Legal Affairs Office has noted that Personnel & Budgetary (P&B) or Search Committees would be exempt from NYS-OML, DSC asserts that, as per the definitions of Program Standing Committees under Bylaw 3.6, this is a gross mischaracterization of the actual functions of Program Standing Committees; in fact, no committee serves an exclusive P&B or Search function. The only committee that perhaps might be considered a P&B or Search committee is that of Faculty Membership, in that it may make recommendations on faculty appointments, promotions, salaries, and new faculty hires; however, in many programs that committee also decides on the standard criteria to be considered for new faculty appointments and promotions, which serves a structural function for the program’s composition of faculty.

As noted earlier, each of these committees may consider private information that is not fit for public consumption. NYS-OML provides for the convening of executive sessions in such cases for reasons including discussion of “the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation” and “the preparation, grading or administration of examinations” (3). It is the position of DSC that all other business conducted by Program

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Standing Committees, as it involves the appropriation of public monies and decisions of academic policy for a public institution, is well within the guidelines set by NYS-OML for meetings of public bodies.

In light of these issues, and to ensure the transparency of policy decisions and democratic processes at the program level, DSC asks that a letter be sent to all Executive Officers via email and copied to the entire Graduate Center listserv noting the following:

Program Standing Committees must operate by Robert's Rules of Order, Newly Revised, including keeping of agendas and minutes, and agendas must be publicly disseminated and minutes made publicly available in accordance with NYS-OML;

Students must be elected by their fellow students to Program Standing Committees, and these student representatives may discuss any matter of policy or curricular change with their constituents, as long as the contents of the discussion do not directly violate the privacy rights of individual faculty members or students;

As duly elected representatives, students may not be asked to leave any part of the meetings of Program Standing Committees for any reason, and as required by Bylaw 5.2, "student members of the Executive Committee have the right to participate in *all* discussions on matters of policy and on individual candidates for appointment, reappointment, promotion, and tenure";

Executive Committees are required, as per Bylaw 3.5F, to review, and update, if necessary, their program's governance document which is on file with the GC in the Fall semester of the final year of an Executive Officer's current term; and

NYS-OML provisions must be applied to Program Standing Committees, including NYS-OML determinations of permissible reasons to conduct executive sessions, as per NYS-OML section §105.

In addition to the language above, The DSC requests that the email contain contact information for both the DSC and an administrative office so that students and faculty can receive further information or discuss specific cases.

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Executive Committee  
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Sincerely,  
The Doctoral Students' Council  
*Unanimously endorsed March 15, 2013*

(1) GC Governance Document: <http://www.gc.cuny.edu/About-the-GC/Resource-Services/Governance-Policies-Procedures/Document?id=4793>

(2) CUNY Legal on OML: [http://www1.cuny.edu/mu/vc\\_la/2006/01/02/requirements-of-the-open-meetings-law/](http://www1.cuny.edu/mu/vc_la/2006/01/02/requirements-of-the-open-meetings-law/)

(3) Open Meetings Law: <http://www.dos.ny.gov/coog/openmeetlaw.html>