



**OHIO**  
UNIVERSITY

Board of Trustees

O h i o U n i v e r s i t y

**Board Meeting Minutes**

**March 1, 2021**

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**Ohio University Board of Trustees  
Special Meeting of the Board of Trustees  
Monday, March 1, 2020  
Virtual Meeting - Online**

Chair Janelle Coleman called the March Meeting of the Ohio University Board of Trustees to order at 4:09pm.

*Roll Call*

Board Secretary David Moore called roll.

Present: Chair Janelle Coleman, Vice Chair Cary Cooper, Trustees Scott Borgemenke, Steve Casciani, Matthew Evans, Lorrie Platt, David Scholl, Diane Smullen, Peggy Viehweger; National Trustees Anna Harvey and Eileen Sheil, Alumni Representative Jeff Laturell, Student Trustees Justin Kelley and Ellen Gill, President Duane Nellis, and Board Secretary David Moore.

*Approval of Agenda*

Chair Coleman asked to approve the agenda for the March 2021 Meeting of the Board of Trustees; Trustee Scholl moved to approve the agenda; Trustee Viehweger seconded; Chair Coleman called for a vote; with all in favor, the agenda was approved.

## Chair's Introduction

Chair Coleman stated:

Good afternoon and thank you all for joining us for this special meeting of the Board of Trustees. I know how busy everyone is, and your willingness to carve out this time and dedicate yourselves to the important task at hand is greatly appreciated.

Today the Board will review the Report regarding the Appeal of the Tenure Revocation of Dr. Yusuf Kalyango, which was issued by the Faculty Senate committee on December 29. As required by the Faculty Handbook, the trustees have received from President Nellis both the Report of the committee and full transcript of the hearing held on December 10 and 11. The Board will review and discuss this matter, with the goal of agreeing whether to accept and sustain the recommendation contained in the report or submit objections to the committee for reconsideration. In conducting this review, we will take into account only the full record of the case that came before the Faculty Senate hearing committee, together with the report and transcripts.

We anticipate the Board spending a significant portion of this meeting discussing the matter in Executive Session, during which time, per the Faculty Handbook, Dr. Kalyango and his representative have been invited to appear. I also expect that the Board will return to public session this evening to finish deliberations and, if ready, vote on an appropriate resolution.

I also want to take a moment to say that, to a person, the trustees appreciate and acknowledge the gravity of the issues that come before us today, as well as the ramifications our decision is likely to have for the individuals directly involved in this matter – particularly the complainants and Dr. Kalyango – as well as the university at large. Over the past few years, many members of our university community have already committed significant time and energy participating in meetings, investigations, hearings, and reports related to this matter. In particular, we wish to thank the Chair and members of the Faculty Committee for their diligent efforts and commitment of time to this important matter. We are sincerely grateful to them for their time and efforts, and we similarly dedicate ourselves to conducting our deliberations with the seriousness and focus these issues deserve.

That said, is there a motion to move to Executive Session pursuant to the provisions of Section 121.22(G)(1) to discuss matters relating to the employment and possible discipline of public employees?

## Executive Session

Trustee Casciani moved the committee; Trustee Platt seconded the motion; Chair Coleman asked for a roll call vote; Secretary Moore called the roll; The motion passed unanimously at XXX pm. Chair Coleman announced that the Board is now in Executive Session and that the public video stream will be paused

At 8:26 pm Chair Coleman called for a motion to exit Executive Session. Trustee Casciani motioned; Trustee Evans seconded the motion; Chair Coleman asked for a roll call vote; Secretary called the roll; Secretary called the roll; the motion passed unanimously, and the Board exited Executive Session.

## Resolution

Chair Coleman stated:

Thank you to all who have been waiting while the Board met in Executive Session. As indicated prior to adjourning, the Board has confined its discussions to the record of the proceeding before the Faculty Senate Committee. Nevertheless, the record is extensive so there was much to consider. A decision of this importance merits careful and thoughtful deliberation. We appreciate the patience of all while the Board conducted this necessary review.

At this point I would ask my colleagues on the Board if there are any motions as to how the Board wishes to proceed. Here, it is our understanding that three motions are permissible at this time:

First: per the procedures in the Faculty handbook, we may consider a resolution to sustain the December 29, 2020 report of the Faculty Committee.

Second, we may consider a resolution to object to the Report and, thereby, ask the faculty senate committee to reconsider in light of this Board's objections. If such a motion is made the motion should provide the nature or description of the objection or objections.

Third, we may entertain a motion to adjourn and reconvene for further consideration of this matter at a later date.

Are there any motions at this time?

## OBJECTIONS TO REPORT OF FACULTY SENATE COMMITTEE

### RESOLUTION 2021 - 3896

**WHEREAS**, in two separate investigations arising from complaints by students the Office of Equity and Civil Rights Compliance (“ECRC”) found it more likely than not that Dr. Yusuf Kalyango violated University Policy 40.001 and University Policy 3.004 in one matter and University Policy 3.004 in the other matter; and

**WHEREAS**, based upon the findings of the ECRC, the provost convened two separate faculty composed University Professional Ethics Committees (“UPEC”) to review the allegations against Dr. Kalyango; and

**WHEREAS**, both UPECs unanimously determined that there was adequate cause to initiate loss of tenure proceedings against Dr. Kalyango; and

**WHEREAS**, pursuant to the provisions of Section II.D.5. of the Faculty Handbook (“Handbook”), the Director of Dr. Kalyango’s Department, the Dean of Dr. Kalyango’s College, and the Provost all recommended that Dr. Kalyango be de-tenured; and

**WHEREAS**, the President concurred with the recommendations and notified Dr. Kalyango of the grounds for loss of tenure and advised Dr. Kalyango of his right to seek a hearing before a Committee of the Faculty Senate (“Committee”) in accordance with the Handbook; and

**WHEREAS**, Dr. Kalyango timely requested a hearing that took place on December 10-11, 2020; and

**WHEREAS**, the Faculty Senate Committee issued its Report on the matter on December 29, 2020 for the automatic review of the Board of Trustees; and

**WHEREAS**, the Board of Trustees met to consider the Committee’s Report and the record of the matter before the Committee, including the transcript of the hearing and the documents submitted to the Committee.

**NOW THEREFORE, BE IT RESOLVED** that the Board of Trustees, after careful consideration of the Report and record before it, makes objections to the Report as set forth in Exhibit A and requests that the Committee reconsider its Report in accordance with the procedures set forth in the Handbook.

**BE IT FURTHER RESOLVED** that the Board of Trustees respectfully requests that the Committee act on the objections and submit its reconsideration to the Board Secretary within twenty-one (21) days.

**BE IT FURTHER RESOLVED** that the Board Secretary is instructed to deliver a copy of this Resolution and Objections to the Committee Chair.

## **EXHIBIT A**

### Ohio University Board of Trustees Objections to the December 29, 2020 “Faculty Senate Hearing Committee Report Regarding the Appeal of the Tenure Revocation of Dr. Yusuf Kalyango”

- 1) **Standard Used** – The Board objects to the Faculty Senate Hearing Committee’s application of a clear and convincing standard of proof rather than the preponderance of evidence standard, which the University has used consistently in past cases. University Policy requires the ECRC to apply the preponderance of evidence standard. Federal law permits universities to choose what standard it applies and only requires the university to apply the same standard to all cases. The Faculty Handbook is silent as to the standard.
- 2) **Cross-Examination** – The Board objects to the Committee’s failure to allow the University’s representative through counsel to ask Dr. Kalyango questions at the hearing even though Dr. Kalyango gave testimony, responded to questions by his attorney, and by Hearing Committee members. The Faculty Handbook provides that: “[t]he faculty member, or his/her representative, and the President, or his/her representative, will have the right to confront and question all persons who make statements before the committee.” The Board asks the Committee to explain its reasoning.
- 3) **Explicit Findings** – The Board objects to the Committee’s failure to make explicit the grounds on which its findings were made. For example, the Committee concluded that during the investigation TH “crossed the line,” and acted in an inappropriate manner that could damage the integrity of the ECRC; but the Committee cited no explicit evidence or findings to support its conclusions. Another example is the Committee’s statement, without citing specific evidence, that some faculty members were using current students to pursue the case against Dr. Kalyango without explanation of why or how this, if true, was relevant to the determination of whether Dr. Kalyango committed violations of university policy.
- 4) **Conflation of Terms** – The Board objects to the Hearing Committee’s apparent conflation of “moral turpitude” with the alleged violations of University policies by Dr. Kalyango, and the Committee’s apparent errant conclusion that moral turpitude is an independent basis to terminate tenure. It is not a cause for termination. Rather, a finding

of moral turpitude only relates to whether the faculty member loses a year's pay if the faculty member is terminated for breach of university policy. The Board asks the Committee to clarify its reasoning.

- 5) **Review of Process** – The Board objects to the Committee's expansion of its charge and authority in the Handbook to review "the statement of grounds for dismissal already formulated" by reviewing processes followed in the matter. Given that the Committee did review and comment on process issues, the Board objects to the Committee's specific findings related to these issues such as:
- a) The Committee's statement that the Handbook only provides minimal process rather than sufficient or adequate process to guide the proceeding. Please explain the basis for this assertion.
  - b) The Committee's statement that the University failed to conduct an "arbitration," despite the Handbook not requiring an arbitration. Please explain the basis for the Committee's statement.
  - c) Contrary to the Committee's "questioning" whether Dr. Kalyango had an opportunity to engage counsel and to adequately respond to the charges, it appears to the Board that Dr. Kalyango had adequate notice of the charges, several opportunities to fully respond to the charges, and that he took full advantage of those opportunities. Please explain the basis for the Committee's questions.
  - d) The Committee questioned whether anyone had considered "other measures of disciplinary action" before detenuing. The Board saw substantial evidence in the record that other penalties were considered, including in the reports made by two UPECs. Please explain the Committee's rationale for its question.
  - e) The Board also asks the Committee to provide citations to the Handbook whose provisions the Committee either believes were not followed by the University or questions whether the University complied with in this case.

Vice Chair Cooper motioned that the board approve the resolution entitled, "OBJECTIONS TO REPORT OF FACULTY SENATE COMMITTEE," and asked Secretary Moore to read the resolution. The resolution was read. Chair Coleman asked if there was any discussion. Trustee Scholl seconded the motion; Chair Coleman called for a roll call vote; Secretary Moore called the vote; the motion passed 9-0 (Trustee Casciani voted "yea" by text due to technical issue).



## Adjournment

Chair Coleman adjourned the meeting at 8:42 pm.