

WAYNE STATE UNIVERSITY
ACADEMIC SENATE
PROCEEDINGS OF THE POLICY COMMITTEE

August 5, 2019

Present: L. Beale; P. Beavers; V. Dallas; r. hoogland; B. Roth; N. Simon; W. Volz; K. Whitfield;
A. Wisniewski

Absent with notice: D. Kessel

Guests: Linda Galante, Associate General Counsel; Brandy Banks, Title IX Director; Ashley Flintoff, Director, Planning and Space Management; Sean Campbell, Facilities Planner, Facilities Planning and Management

1. Title IX and Related Issues: Brad Roth, Linda Galante, Associate General Counsel, and Brandy Banks, Title IX Director, introduced the discussion regarding proposed policy changes related to new federal proposed regulations and other issues. Provost Whitfield pointed out that this is one of the most challenging and important topics facing higher education: in some cases these issues may deny an individual an opportunity to be a faculty or student candidate. He suggested that we can enhance some of the decision-making process for handling cases, deciding which ones come forward, and what parties should be involved and similar issues. Brad Roth noted that the primary matter that we have been asked to consult with the general counsel's office on is the question of consensual relations between employees or between employees and students. He points out that the new proposed federal regulations, which aren't yet final, deviate from previous practice in a few ways. Some of those permit the university to do things that nobody would want to be done. The Policy Committee has already commented formally on key issues in the proposed regulations during the comment period. There are some important modifications with respect to actual procedures involving allegations against individuals and students. There is a lot of room to maneuver although there are certain practices, particularly the use of single investigators, which need to be validated if the new regulations come into force. It was also clarified that these new regulations might be out by November: once final, they must be complied with immediately.

Linda Galante reminded Policy that these issues have been under discussion for about a year. Staffers are now aware of and trained in Title IX. The office did a comprehensive review of the existing policies and procedures regarding sexual misconduct. The purpose was to ensure that we are in compliance not only with Title IX, but also with the Cleary Act and its amendments. There is a proposed "umbrella" policy—the 32-page policy is one similar to those adopted by other universities in Michigan. The policy is intended to "put everything in one place". Currently there is (i) a Board of Governors statute on sexual harassment, (ii) a presidential sexual assault policy, (iii) a Student Code of Conduct that includes sexual misconduct with specific procedures for students, and (iv) a discrimination and complaint process that OEO has implemented for faculty and staff. These policies are in compliance, but the General Counsel's office does not consider them user friendly and thus it was recommended to have one policy in this area. A few recommendations for definitions and terminology were also made for everything to be standardized.

The recommendation also includes a section on consensual relationships. Before Policy are two different documents for consideration that come from an organization that focuses on Title IX issues. Policy Committee viewed the alternative document as a more reasonable and practical solution. It doesn't preclude people from having relationships, which naturally occur between people who get to know each other in a work environment, but instead requires notice to an appropriate supervisor (chair/dean) of the employee's unit so that arrangements can be made to ensure that an employee is not evaluated by a romantic partner supervisor. Linda Beale suggested that it would be more appropriate to have both parties participate in providing notice, else a person in power (e.g. a senior faculty member or a higher ranking staff person) might provide notice claiming a consensual relationship when in fact it was not consensual.

Linda Galante indicated that she would prefer to make additional changes in the proposed policy document before taking it to the Board of Governors.

Under the new federal Title IX policy, only responsible employees, i.e., people who have the authority to act, are required to report an incident. Most Policy members considered it important to encourage people to report and to provide better information to all campus constituencies about reporting, including the people to whom any report of sexual harassment or assault should be made. Linda Galante noted that it would also be important to have a Board of Governors person trained in Title IX, possibly with an attorney assigned to the Board for that purpose. William Volz asked who counts as a "responsible employee" and whether all responsible employees receive the sexual misconduct training. Linda Galante responded that for students, responsible employees are the ones who are in continuous contact with students, such as academic advisors, people who work in DOSO, Student Housing. For employee-student cases, the academic advisors and all the associate deans who are in touch with students are regarded as responsible employees. For employee harassment, under Title VII all employees are required to report about any kind of discrimination.

The Student Code of Conduct includes many procedures which have been incorporated in the proposed umbrella policy, including credibility, requirement of a live hearing, a respondent's right to cross examine or have an advisor cross examine the plaintiff and vice versa. These changes take the university's administrative hearing process to a different level more similar to court litigation. In the proposed rule the advisors/lawyers would be allowed to participate in conversation and cross examine, while in the current rule they may only advise their client.

A significant change is the standard for finding culpability. The current policy considers *preponderance of the evidence* as the standard for deciding both student and non-student sexual harassment cases. In other types of cases the university currently has a *clear and convincing evidence* standard. The proposed policy provides a single standard for all types of cases. Brad Roth and Linda Beale noted concerns about the preponderance standard easily leading to confusion and minute differences causing different outcomes and supported a "more likely than not" standard as clearer for non-lawyers to understand. Linda Galante said that the proposed policy changes the standard to "more likely than not", incorporates a right to cross examine, and has clear definitions of sexual misconduct, sexual assault, and stalking.

Charles Parrish raised a question regarding the fairness of the hearing panel. The hearings would be decided based on majority of votes without requiring consensus. The current hearing panels consist of 3 faculty and academic staff members selected by a blind draw from the

Hearing Panel selected by the Provost and Policy Committee and 2 students selected by the Student Senate. Under the Student Code of Conduct, each side can strike 2 people from the panel. The panel is required to be trained for a sexual misconduct case.

Linda Beale asked whether the hearing panel has access to information about any prior cases against the same individual. In determining culpability, evidence of prior instances is allowed only if there was a prior relationship between the two parties, but such prior behavior can be taken into account to determine the sanction. Similarly, the reputation of the complainant is not fair game either.

William Volz questioned the difference between sanctions for Title VII and Title IX, noting that students seem to fear the hearing panels, believing that they are tough. Linda Galante noted that even if there is a tough hearing, the final decision is in the hands of the DOSO, and that decision can be appealed to the provost.

Linda Galante wondered what Policy thought about having two documents: one would be the actual sexual misconduct policy and the other would be the Presidential procedure. That might better lay out the substantive issues and separate them from the process that applies, so that everyone understands clearly.

William Volz expressed a concern that complaints might not come forward because of the gender of people in the responsible persons role. Linda Galante responded that this is the primary reason for having a Title IX Director. Brandy Banks added that the complainant does not have to go to the supervisor of the accused person but can come to her or David Strauss, a deputy Title IX director who serves in a voluntary capacity. The goal is to make the person feel comfortable. Everyone has a right to come forward, a right to report to police, a right not to report but still get support services even if the person does not go forward with a complaint. The difficult part is that Title IX employees who learn about a problem may report, even if the complainant decides not to file a formal complaint. The university needs to be aware of such incidents, and Michigan law requires that the university take steps if there are 3 different complaints about a single individual.

Naida Simon asked whether students and employees are well enough informed about these issues. Perhaps a survey would be helpful. She suggested that the survey and any training distinguish between academic staff and other staff, since they interact with quite different parts of the campus personnel.

Brandy Banks noted that the training held last year was helpful, though of course it didn't reach everyone since, as Linda Galante noted, it is not mandatory. The housekeeping, studio, and grounds staff have been already given an in-person training session. The Academic Senate notice memo was helpful in alerting faculty and academic staff and quite a few participated in those sessions. Linda Beale noted that the Academic Senate would be pleased to help provide notice again this year, if we are given the information to distribute. Charles Parrish suggested that Title IX representatives attend department faculty meetings: each department ordinarily meets once a year, and that will reach the maximum number of people. Linda Beale suggested that the Academic Senate could also bring the Title IX representatives to the October full Senate meeting (first Wednesday at 1:30) to talk about consensual relationships and the changes in the new proposed policy (assuming that it will not yet have been put forward to the Board of

Governors so that the office can benefit from any ideas the membership has). Paul Beavers mentioned that it would be a good idea to have a camera at one of the training sessions that would allow the information to be posted and viewed freely at any time. renee hoogland suggested that flyers could be useful to market the training and awareness sessions around campus. Linda Galante said that she is working with Heather Marks from DOSO on marketing and graphics to do exactly that. renee suggested that these awareness actions could take place in open spaces where the people actually are. It was concluded that the university has a lot of resources to create awareness about the issue and it just needs to be targeted better.

Linda Beale suggested that everyone read through this material and the proposed 32-page document in detail so that we can have an internal discussion about any issues people see in the proposed document, with attention as well to the alternatives for addressing consensual relationships. Although Brad Roth will not be able to attend the meeting on the 19th, he will reschedule his meeting with Linda Galante after that meeting so that he can share any ideas and concerns Policy develops at that time.

Another related issue was raised by renee hoogland in a memo distributed to Policy on the mistaken views about “sex” and “gender”. Renee noted that the June Board of Governors Academic Affairs meeting had a presentation about the Office of Equal Opportunity. She questioned the apparent lack of understanding of the current scholarly views on sex and gender discrimination, noting the over-simplification of the President’s definition of sex as “biological” and gender as “social.” Brad and renee will discuss where to include this in the proposed policies.

2. Chair’s Report.

Keith Whitfield noted that there seemed to be a slight difference in online courses compared to traditional courses, in that the DFW rate was *lower* in online courses both at undergraduate and graduate levels. The online SETs are a bit lower for graduate courses but essentially indistinguishably different for undergraduate courses. He had asked for this comparison to be made, and will also look to see whether there are differences depending on professors.

The Provost suggested that the October Senate meeting consider having Anne-Marie Cano present on “Faculty Success” initiatives, with emphasis on her work on mentoring relationships. The goal is to have a mentorship network, to encourage leadership and communication from the Chair, and to help faculty to communicate with the chair about the faculty member’s duties and expectations.

The Provost again emphasized the conversation with Stuart Baum (Student Senate President) regarding “open education resources” (OER) and suggested that Policy name a faculty member for the committee. Linda Beale noted that she had previously suggested to both Stuart Baum and the Provost that it would be best to use the Educational Development Grant Committee, an existing university-wide academic governance committee appointed in consultation with the Academic Senate and Provost that includes faculty across a variety of disciplines, for making any awards under the Student Senate’s OER proposal for incentivizing faculty to write advanced course texts under the OER umbrella that the President had approved without any consultation with the Academic Senate, even though the Faculty Affairs Committee had held in-depth discussions about OER over two and a half years and found considerable problems with the

process (unlikely recognition for promotion and tenure; no royalties to faculty authors; no copyright to faculty authors; no real peer review; no control of post-authorship ongoing digital editing process). FAC was worried that untenured assistant professors might be pushed to be involved in this, and find it unhelpful in promotion and tenure. renee hoogland noted that the students on FAC were aware of this idea: they want to get cheap materials for study, but they tend to have hard copies printed and bound without understanding the differences in quality of this resource. There's another issue of dyslexic people not being able to read online. The Provost insisted that the existing Educational Development Grant Committee would not be appropriate; and that it would be better to use the OER committee constituted by the administration for the prior, intro-text incentive program. Linda Beale noted that her understanding was that the prior committee was essentially an administrative ad hoc committee; this is problematic when there is an existing academic governance committee that has as its charge reviewing exactly these kinds of proposals. Further, the proposal itself is problematic in two ways: (1) apparently a significant amount of the funding (\$20,000) must be paid for licensing, so that it is likely only 2 faculty could be funded at \$5000, while the company retains the copyright and all future profits, and (2) the total funding for this student proposal is about the same as the total amount of funding each year for the Undergraduate Research Opportunity Program, which clearly benefits students in a significant way. The Provost indicated that this is a pilot program that will allow the university to assess whether it is useful or not and the faculty response will be important. Paul Beavers volunteered to provide the documents for the earlier student-requested pilot program for discussion on September 19th. Linda Beale noted that this is a good example of process problems at Wayne: the Academic Senate is supposed to be consulted on educational policy making, and students participate on our committees so that they are a part of our policy positions. However, the Student Senate leadership is not always in tune with the students at large and tends to want "credit" for developing proposals, and President Wilson apparently does not consider the Academic Senate role when he grants funding for a student proposal that primarily affects faculty and educational policy. As a result, student proposals get monetized and supported even if it is against the discussion that happened in FAC and CIC. Keith Whitfield nonetheless insisted that he wanted to go ahead with the administrative committee, but would like a faculty senate representative. Linda Beale asked for a copy of the charge to that committee and its membership to the committee for discussion on the 19th.

Because the Policy Committee had two sets of guests for significant topic discussions, the approval of the minutes was delayed until the next meeting, and the President did not make a report on activities since the last meeting.

3. State Hall Decision-Making Process. Linda Beale noted that the Capital Funding and Priorities Committee had discussed putting State Hall forward as our request for funding from the State, and that she had emphasized the importance of having strong representation of teaching faculty who use the State Hall building for their classes on the Steering Committee. Ashley Flintoff and Sean Campbell joined the Policy Committee to discuss the process and timing for various developments.

Ashley Flintoff noted that State Hall is in need of a full renovation. The Master Plan process showed that we have considerable classroom space, but poor utilization of it. Many are dissatisfied with State Hall's lack of technology, wrong sizing for the types of classes faculty tend to teach there. Considerations for the renovation include how to provide for active learning

and traditional learning in the classrooms. The Facilities and Planning team is already modernizing the current elevators and adding a third ADA-compliant elevator across the hall from the current elevator bank. renee asked why the additional elevator was not added at the other end to provide greater convenience and was told that there was considerable cost saving here (no need to dig an elevator pit) so that the elevator project comes out at about 3 million. renee asked why the building is closed for fall, and Flintoff replied that there is an accessibility issue for all floors. Linda Beale asked about the projected end date of the State Hall project. This will depend on funding. The State Hall renovation project is to be proposed as the State Capital Outlay project, for which the request is due October 30th. The university has decided to put some money into planning and programming the project thoroughly to avoid mistakes in the budget and the need for increased funding that resulted in the delay of the STEM project. A consultant has been hired to review the building systems and needs. Renovation will remove the 10-year deferred maintenance cost and provide a building space that meets the needs of our students and faculty. The consultants are doing it in two parts. One part is the building analysis piece which is looking at all the systems and understanding what needs to be fixed, what needs to be worked on, what's okay.

Now the university is ready to begin the programming discussion--what are the types of spaces needed and their cost estimates. The cost and design is further refined as one gets into the design process. renee raised a concern about the 4th floor renovation already done at State Hall, which seemed poorly done: it looked nice, but didn't really meet the needs of most of the typical classes that are held in State Hall. Ashley responded that, while she was not involved, her understanding is that it was not planned the way this will be done. There was little conversation with faculty at that time about their needs and there wasn't a holistic look at the types of spaces offered across campus and how this fits in. She has received mixed reactions from faculty and students about it. She learned that they have to get faculty and students engaged earlier in the process and they cannot be so myopic in the type of classrooms that they provide. They need to provide a broad range of classroom types. Charles Parrish pointed out that the renovation was done taking the wrong faculty into account: the planners had their own ideas about innovative classroom spaces, but didn't ask the people who actually teach in those spaces what kind of classroom they wanted. There is a danger in going with whatever trends are being discussed by planning consultants. Ashley noted that the Policy Committee has provided a list of faculty who currently teach in State Hall and were interested in being involved in the planning. The Facilities Planning department has contacted them to serve as a focus group. Linda Beale urged that these faculty members should not be treated as a focus group that meets once and is dismissed but should be the core of the key "State Hall Steering Committee" for this project, with the addition of the registrar (because of the understanding of typical class sizes and timing of classroom needs) and the Office of Teaching and Learning (for its contributions of ideas for accommodating a range of teaching styles). That committee should then be asked for inputs regarding the classrooms, spaces and use of that building all the way through. Paul Beavers noted he was part of the faculty focus groups for the 4th floor: they were given fixed set design modules and merely asked to give input on these fixed module designs. They didn't consider the needs of different disciplines (erasable chalkboards for math; clear 'front of the room' boards that can be used for a variety of courses). They were asked for very little input. Ashley Flintoff confirmed that this time the designs will be focused on needs and from faculty input and not pre set like before. Paul Beavers commented further that using focus groups with limited flexibility of what responses will be considered provides a misleading result that doesn't actually reflect faculty needs. Ashley responded that this first discussion is the "programming" phase and not

yet the “design phase” of the project: the goal is to gather input to get as accurate a view of what is needed for cost estimates as possible.

renee wondered how the renovation will achieve design integrity, given the architecturally inappropriate color scheme and furniture used on the fourth floor. Bill Volz and Charlie Parrish raised concerns about appropriate cleaning of the facility: the classrooms have generally been filthy and professors have had to clean them themselves sometimes. Ashley noted that there is a terrible shortage of custodial staff but part of the renovation is complete cleaning. The consolidation moves in the campus master plan will also better allocate limited university resources among fewer buildings. Victoria Dallas asked about the assessment of need and what is the way they are going to implement it. Ashley said that its going to be a multi layered approach, they will speak to faculty, students, registrar. How the registrar schedules classes. What they are seeing as far as scheduling needs, where there were mismatches reported.

Victoria Dallas asked about the faculty groups and if they are also speaking to other groups. Ashley replied by saying that they are speaking to many different groups: faculty who teach in the building, students, OTL, the technology resource group. Linda Beale again urged that they rethink this focus group approach: the faculty advisory committee (with the faculty members who teach in State Hall) should include a representative from OTL, the Registrar, and someone from the Technology group, so that they all have the same information. The students are here for short a period and of course would like luxury quarters with their particular digital items available, so it makes sense for the students to act as a focus group to provide input, and then that information can be brought to the steering committee. Students really should not have equal decision-making authority to the teaching faculty. Charles Parrish agreed that Facilities should consult primarily with those faculty who teach regularly in State Hall. Victoria Dallas pointed out an example of planning of 2nd floor of Manoogian where all of the faculty were invited to comment and it turned out to be great space. Ashley reiterates that this will be how things are handled. Facilities would like to present something to the Senate in the September 11 meeting since they will need to present to the Board at its late September meeting in order to file by October 31st.

The group moved to a more general discussion of other classroom spaces, such as General Lectures and Manoogian. Charles Parrish asked why the Master Plan suggested razing General Lectures and Manoogian even though they are widely used. Ashley Flintoff said they reviewed classroom utilization and found that the university has more classroom space than it uses or needs. All but one large class currently held in General Lectures can be accommodated elsewhere. The location, deferred maintenance cost of and ability to accommodate classes elsewhere support demolishing those building to make the space available for future development as needed. Charles Parrish asked about the Medical School situation, and Ashley responded that because the medical school is in flux they have merely tried to find potential scenarios for the next 10-15 years. In each scenario she said Scott Hall has to be replaced and there are 5 or so options for doing that. No decisions have yet been made. Victoria Dallas noted that there is no other space on campus able to accommodate the largest class held in General Lectures. Ashley suggested that there can be a solution for a single course, but Victoria added that there are quite a few events organized for which that kind of space is needed. Ashley responded that the campus master plan is a framework but it doesn't script the decision making. The final decision on these issues will require considerable further discussion. These plans may change completely. The purpose of the campus master plan was to gather

data, information, make informed decisions but not script them. Paul Beavers asked if General Lectures and Manoogian would cease to function or be operational till the decision to use those properties is made. Ashley said that they would likely be removed before an actual decision is made on how to develop the space after removal, in order to consolidate classes and better use resources. renee asked whether sustainability is being considered and Ashley said responded that it is an ongoing concern, with the sustainability team working with Facilities on every project. They see many opportunities for more responsible grounds and maintenance that is responsive to all of the sustainability concerns.

The discussion ended with a request that Facilities provide Policy with the draft of the Capital Funding Request as soon as possible so that the Academic Senate can have input, and also inform Policy of the final makeup of the consulting committees and groups. [*The Policy Committee received the current draft materials after the meeting and will discuss those for comments to Facilities at the August 26 Policy meeting.*]

Approved as submitted at the Policy Committee meeting of August 19, 2019