

WAYNE STATE UNIVERSITY
ACADEMIC SENATE
PROCEEDINGS OF THE POLICY COMMITTEE

August 26, 2019

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

Guests: President M. Roy Wilson

The items marked with an asterisk constitute the Actions of August 26, 2019.

1. Report from the Chair:
 - a. The FestiFall will take place tomorrow on Gullen Mall. Move in days for students went smoothly.
 - b. Marick Masters, Program Director of Labor@Wayne, resigned from the position.

[President Wilson joined the meeting.]

2. Academic Freedom and Shared Governance:

Linda Beale began the discussion by noting that the Policy Committee invited President Wilson to the meeting to discuss issues about academic freedom as detailed in the recent memo, and shared governance generally. The Policy Committee is concerned about free speech and the importance of faculty and students being able to address controversial issues.

PC discussed the three incidents addressed in the memo with the President. The first issue concerned the methods used by the Office of Internal Audit in response to an anonymous tip. Second is the issuance of a gag order by a department chair. Third is the deletion of the substantive content of a whistleblower's email message that had been sent to a number of people within the university, including being forwarded to members of the Academic Senate because of its relevance to shared governance.

The Office of Internal Audit carried out an audit of the attendance of a member of the academic staff who was asked to account for her attendance for a four-year period based on her use of University parking facilities, and a "deep dive" into days when she did not access a variety of computer programs that she uses in her work. The Audit Office conducts a full-scale investigation of tips despite Carolyn Hafner, the Associate Vice President and Chief Audit Executive, telling Linda that the majority of anonymous tips stem from bias or spite. The Academic Senate responded to the investigation with two PC memos and the full Senate's unanimous adoption of a resolution expressing its concern about the way the Audit Office handles anonymous tips.

President Wilson stated his belief in the importance of academic freedom. However, he suggested that in some situations there might be mitigating circumstances. The President noted that the audit committee of the Board of Governors had in the past

expressed strong concern about issues of time fraud and time card fraud. The Internal Audit office, he claimed, does allow for some level of triage: the same amount of scrutiny is not applied to every complaint. Ms. Beale noted, however, that she had a lengthy meeting with Ms. Hafner, who seemed to have difficulty understanding the due process distinction between an initial inquiry and a full-scale investigation. When speaking with Ms. Beale, Ms. Hafner was adamant that she would not distinguish process to conduct an initial inquiry. In a later conversation, Ms. Hafner said that she would consider doing an initial inquiry, but then at a later date, she explicitly stated that she would not adopt the PC proposal for a due process distinction between the initial inquiry and full-scale investigation.

Mr. Roth spoke about what in law is known as the shifting of the burden of production that is the heart of the concern here. The person being investigated in the case discussed had to prove her innocence by documenting four years of presence, whereas the initial inquiry should have conducted an initial inquiry to look at her personnel file and perhaps spoken with her direct supervisor rather than assume there was substance to the anonymous tip. Checking an employee's use of his or her OneCard for parking is not an appropriate or effective way to determine if someone is at work—many employees do not use campus parking, and there has been no notice that voluntarily purchased campus parking use data can be used against employees. President Wilson stated that the audit office has found fraud in a prior case through the use of parking information, and the Board of Governors is the body that instructs the Office of Internal Audit as to its focus. If there is a question of overzealous internal audits, the administration can take that issue to the audit committee and see what threshold they want to impose. Ms. Beale pointed out that due process rights are as important to the university as fraud is. Moreover, the approach taken by the audit office has a chilling effect on university employees that undermines academic freedom. She suggested that Brad Roth and she meet with the President and the audit committee to discuss the issue fully. President Wilson will consider how to proceed.

The second issue arose in connection with a departmental investigation of a professor for various issues. The investigation itself is *not* the concern of the Policy Committee, which does not have access to that confidential information. The concern of Policy is the Department Chair's issuance, with the Dean's support, of a gag order to faculty—specifically stating that faculty were prohibited from using posters "*or any other means*" that might inflame the situation or add to the controversy and conflict. A gag order on discussion is never appropriate in a university setting.

President Wilson stated his belief that a department chair should be able to lead in difficult situations in a manner that she or he thinks is appropriate. He stated that he did not view the situation to be an academic freedom issue.

Policy members contested that view, explaining that it clearly is an academic freedom issue when substantive discussions, even at an abstract level, are prohibited. Even worse, Ms. Hoogland noted that people understood the gag order as a continuation of the culture of silence and silencing that had gone on in the

department over the years and prevented the underlying problem from being addressed. She noted that the situation was not brought to the attention of the Provost or the President over many years, which is not acceptable: the culture that permitted problems to continue must change. Ms. Beale stated that the administrative response, inappropriate in itself, was even worse in this particular setting of an ongoing investigation: banning postings or conversations about the situation furthered the culture; it did not change the culture. Moreover, instituting a gag order to faculty, in response to abstract statements about justice, is entirely inappropriate in a university setting where dialogues about controversial issues are at the core of academic exploration. That is the academic freedom issue. The ability of the faculty and students to empower themselves by addressing the issue in some way was squelched. Mr. Roth noted that there are clearly many different issues at stake, including (as the Policy Committee noted in its memo) the importance of protecting the due process rights of the faculty member. The chair assuredly felt a need to encourage calm. Nonetheless, those concerns are irrelevant, because certain things – like gag orders – need to be simply “off the table”; they cannot be allowed because of the principles underlying academic freedom and the legal principles pertaining to gag orders. There are certain recourses that cannot be taken. Expression can be subject to time, place, and matter restrictions. For example, you can decide that people should never poster in departments as a general rule. You cannot, however, have a general policy of allowing postering and then suspend the practice because someone puts up a poster that expresses a view that you do not like. That runs afoul of academic freedom principles. Mr. Parrish added that the chair’s response to a large number of posters was inappropriate, but it was endorsed by the dean: this was a faulty attempt to address problems that had been ignored for years.

President Wilson said he was beginning to understand better what the issue was and agreed with these statements of the committee that the actions did compromise academic freedom. He also stated that the culture that permitted the behavior of the professor to go on for years has to be changed, since first and foremost we have to protect students.

Ms. Beale reiterated that the Policy Committee is focused on the administrative response rather than the investigation or the issues underlying the investigation. Chairs and deans should not issue gag orders about issues that faculty or students are entitled to discuss, whether the orders are formal or informal. That is the academic freedom issue. The Policy Committee would like the President and Provost to issue a statement to the deans and chairs about the importance of academic freedom and the inappropriateness of gag orders.

President Wilson will discuss the issue with Provost Whitfield and respond to the request of the Committee. Ms. Beale stressed that administrators need to understand that issuing a gag order is an assault on academic freedom.

The third issue concerned a whistleblower email message written by an employee in the Office of Student Financial Aid. The staff member was concerned that neither his direct supervisor nor the supervisor of his supervisor were willing to listen to his

concerns about anti-Muslim discrimination and other matters. He resigned and sent an email describing what had happened. Some initial recipients of the email forwarded it to others, including Ms. Beale. Shortly after the email was forwarded the substantive content of the message was deleted without notice to anyone. In fact, multiple deletions occurred, even of pdfs of the material on individuals' email systems.

President Wilson indicated that he was told that the individuals who asked that the message be deleted felt it was harassment that violated University Policy 00-1 "Acceptable use of information technology resources." Ms. Beale read from the policy, that email "should be used wisely and with consideration for the rights and needs of others" and, under "user responsibility," that "certain behaviors are prohibited to users including sending messages that are malicious or that a reasonable person would find to be harassing." The Policy Committee did not find the message either malicious or harassing and did not think that any reasonable person would so find. Also, Ms. Beale noted, the policy addresses the use of email by the sender, not the recipient.

President Wilson indicated that Daren Hubbard, the Associate Vice President for Computing and Information Technology and Chief Information Officer, and Dawn Medley, Associate Vice President for Enrollment Management, interpreted the email differently.

Ms. Beale received the email as president of the Senate. The sender thought it was worth the Senate knowing that administrators refused to consider an employee's whistleblowing statement about anti-Muslim discrimination. Ms. Beale was informed that Dawn Medley requested that the email be deleted throughout the system, and Daren Hubbard complied. AVP Hubbard informed Ms. Beale that he did so because the email was "borderline offensive" and the university's email system was "not a public forum." Ms. Beale strongly disputed the idea that a whistleblowing email like this that is merely critical of an administrator is offensive. The email system is a university forum and it is used frequently to discuss matters within the university. The deletion of the substantive content of the whistleblowing email, Ms. Beale said, is an absolutely clear violation of academic freedom. Even worse, shortly after it was deleted, Ms. Medley and Ms. Brockmeyer each sent an email providing testimony as to how great the people were who had been criticized in the email, essentially using deletion of the email to brush aside the issues raised by the whistleblower.

The university policy needs to be changed to provide a better understanding of what harassment is and to specify that email content such as the one sent is not to be deleted. Mr. Roth added that the policy should include a clear directive that deleting email messages or email content is not to be a recourse under these circumstances.

President Wilson will discuss this matter with Provost Whitfield. Perhaps, he said, we need clear guidelines as to what constitutes harassment and under what circumstances, if any, might an email be deleted. Ms. Beale wants the guidelines to

state clearly that whistleblower emails cannot be deleted. Whistleblowing is a way in which we find out what has been happening under the table. Ms. Simon recommended that the General Counsel be consulted in developing the policy. It was her understanding that the General Counsel was not consulted in the situation cited. President Wilson said that if there were a situation where someone thought an email should be deleted, the University President and the General Counsel should make the decision.

Ms. Beale said that the investigation by the Internal Audit Office regarding an employee's attendance was over zealous and the handling of the situation in Financial Aid was over-protection of administrative staff by administrators.

Mr. Parrish also criticized the way the situation was handled. The former employee listed his objections in a fairly measured and straightforward manner when he met with his supervisor. He charged that there were remarks about people's gender and ethnic background. Mr. Parrish said that the first thing an administrator should do is to launch an investigation or notify the appropriate people in the university. Instead, they operated in terms of administrative privilege. The employee raised issues that have not yet been thoroughly examined. Rather, administrators praised the person who was cited as being offensive. The university, Mr. Parrish said, should look further into the charges made.

Ms. Beale views the situation as a self-supporting network that tends to overlook problems and provide a means whereby people protect themselves from criticisms that arise. Mr. Roth would like to see some after-the-fact reporting to a body such as the Senate if it is ever truly necessary (under a newly revised policy) to delete substantive content from people's files. The Provost and Policy Committee gave examples of the way different professions handle the removal of confidential messages that are inadvertently sent to people for whom they weren't intended. Lawyers, for example, send an email to the recipient asking the recipient to delete without opening or saving because of the confidential nature of the material accidentally sent. Mr. Kessel pointed out that the university's deletion of the email actually brought more attention to a wider audience instead of achieving the aim of Ms. Medley in requesting its removal. Ms. Simon reported that the Office of Equal Opportunity had investigated an earlier Carter complaint, but talked to only two of the five people named in the email. The people confirmed some of the statements by the former employee. Ms. Beale pointed out that a member of Policy had talked with one of the victims and learned that the lower-level administrator had forced a female Muslim student to high-five him even though she had stated she was uncomfortable doing so.

President Wilson agreed with the Senate that the deletion of this substantive content constituted a grave violation of academic freedom. He will look at the complaint of the former employee and make sure that the investigation was appropriate. He agrees with the Policy Committee's request that the statutes and policies be revised to give more emphasis to academic freedom. The policies should state when, if ever, deletion of emails from the system is appropriate and

provide that both the President and General Counsel must consent to such deletion. Notice should be given to those the deletion affects and to the Policy Committee.

President Wilson will take the concerns about the Office of Internal Audit to the audit committee of the Board of Governors for a review of due process concerns raised, and the resulting problems with chilling treatment of employees when a full-scale investigation is undertaken without that distinction. Members of Policy repeated that the use of the parking system was not a valid indicator of attendance and that employees were never informed that it would be used for that purpose. As a voluntary purchase the use of the parking system is entirely wrong. Some employees never use the parking system, some use it occasionally, and some use it regularly. The President indicated he will discuss with the Provost the development of a statement for chairs and dean regarding academic freedom and the issuing of gag orders.

Ms. Beale told the President and the Provost that the above issues would be discussed at the September 11 Senate meeting and asked for the President's written response to the memo in time for distribution to the Senate.

[President Wilson left the meeting.]

3. Report from the Senate President:

- a. Enrollment: Two reports that Policy Committee reviews regularly have different numbers of students enrolled for the fall term. Both are lower than projected and lower compared with fall 2018. Ms. Beale called attention to the fact that enrollment in masters programs is especially problematic, when other universities in the state are increasing their enrollment.
- b. General Studies: Ms. Hoogland met with Heather Dillaway, Associate Dean for Undergraduate Studies in the College of Liberal Arts and Sciences, about the new program in CLAS for the bachelor of arts in general studies. They worked out new language that will be given to the college's Faculty Council and Faculty Assembly for approval. When that is done, it will be re-submitted to the Board of Governors for action.
- c. Child Care: The university has a website that provides information for students about childcare: wayne.edu/childcare-resources/. The university had an agreement with Rainbow Child Care Centers to hold 50 slots at a reduced rate with different times including short periods of time for use by our students and employees. Rainbow was purchased by KinderCare Child Care Centers and they will not honor the agreement. We will invite Loreleigh Keishley to a future meeting to discuss what next for child care expansion.
- d. State Funding: The state government has not yet passed its budget for fiscal year 2019-2020. It is not known how we will be effected if a budget is not approved by October 1.

- *4. Approval of Proceedings: The Proceedings of the Policy Committee meetings of August 5 and August 19, 2019, were approved as submitted.

5. State Hall: The university will request funding for the renovation of State Hall in the Capital Outlay Request. Ashley Flintoff, Director, Planning and Space Management, is working with Linda to include Policy input in preparing the request. Policy reviewed the current draft and offered suggestions for revisions.
6. Centers and Institutes Advisory Committee – Type I: Centers and institutes are classified as either a university center or a college center. The CIAC-I is the body that reviews proposals to establish new centers and requests to renew the charter of existing centers within colleges. A college center is engaged in academic activities that primarily involve one college (school) and that is under the direct administrative supervision of the dean of that college (school). The CIAC-II is the body that performs the same functions for university-wide centers. The Michigan Developmental Disabilities Institute is due for a review. The Provost and the Policy Committee are required to meet to select the faculty, with the Provost appointing three and the Policy Committee appointing three. At this meeting, the group agreed to ask three faculty to serve on behalf of the Senate. At the next meeting, the group will discuss their tentative selections and concur on the membership.
- *7. Senate Agenda: Policy Committee approved the agenda for the September 11 meeting.
- *8. Committee Assignments: Policy Committee made some changes in the assignments and selected some faculty and academic staff representatives and alternates to the Board of Governors committees.

Approved as amended at the Policy Committee meeting of September 9, 2019