

WAYNE STATE UNIVERSITY
ACADEMIC SENATE
PROCEEDINGS OF THE POLICY COMMITTEE

September 14, 2020

Present: L. Beale; P. Beavers; L. Lauzon Clabo; J. Fitzgibbon; r. hoogland; D. Kessel; C. Parrish; B. Roth; N. Simon; R. Villarosa; A. Wisniewski

The item marked with an asterisk constitutes the Action of September 14, 2020.

Guests: Brandy Banks, Title IX Director; Thomas Cavalier, Assistant General Counsel, Compliance; Nikki Wright, Assistant Vice President, Equal Opportunity Office

Provost Clabo called the meeting to order at 1:31 p.m.

1. Title IX: The U.S. Department of Education issued new regulations for Title IX regarding sexual misconduct effective August 14, 2020. Wayne State has to revise its policy on sexual misconduct to coincide with the DOE regulations. The administration submitted an interim policy that the Board of Governors adopted to cover the period while we revise our policy to meet the requirements of the DOE. Ms. Banks, Mr. Cavalier, and Ms. Wright attended the meeting to discuss the proposed changes. Ms. Wright highlighted the main points of the new regulations and the interim policy the university put in place. Our Interim Title IX Sexual Misconduct Policies and Procedures governs all Title IX sexual misconduct issues for students and employees. To be covered by this policy, the sexual harassment has to be severe, pervasive and objectively offensive (a much tougher standard than under prior regs). Quid pro quo is prohibited between employees, but it is not prohibited between an employee and a student. Wayne State's non-discrimination affirmative action policy thus covers quid pro quo between employees and students. Under the previous regulations, the university had to provide supportive measures to the complainant. Under the new regulations, supportive measures also must be provided to the respondent. A difference in the old and new policies is that the university acts only through the Title IX coordinator and only when an official with authority makes notice of sexual misconduct. Responsible employees are still required to report issues of sexual misconduct and sexual harassment to the Title IX coordinator. The Title IX grievance procedure must meet certain jurisdictional requirements. The complainant must be an employee or a student when they file a complaint. The misconduct must have been in the university's educational program or activity. This means it must have occurred in one of the buildings or at a university-sponsored activity or event. The requirement eliminates activities that occur off campus that are not aligned with Wayne State. If sexual assault or sexual harassment occurs at a fraternity or sorority party it is covered because the organization is sponsored by Wayne State. The misconduct or harassment must have occurred in the U.S. Study Abroad programs are not covered under the new regulations, but the university's non-discrimination policy will cover that misconduct.

The Title IX coordinator is responsible for collecting the evidence and making it available to the parties before a review, a hearing, or a mediation process is conducted. The coordinator gives the information to the investigator and writes a report. Prior to August 14, there was a single-model system. The Title IX coordinator collected the evidence and made the decision. Now the coordinator collects the information, but a separate decision-maker decides based on a hearing or on an informal hearing process (essentially mediation). Both parties have to agree in writing

to the mediation process and the Title IX coordinator must agree that the case is appropriate for mediation. The informal process is not available for cases involving sexual harassment of a student by an employee or in cases involving sexual assault. It is mandatory that those cases follow the hearing process.

Major changes were also made in the hearing process. The stated goal of all the processes and procedures is to treat both parties equally. The Title IX coordinator, the decision-maker, and the hearing panel must be "free from bias." The process follows the preponderance of evidence standard. During the decision-making process, both parties are required to have an advisor. At the initial report the parties may have an advisor but they must have an advisor at the hearing. If they did not select an advisor, the university has to appoint one. During the hearing process, the parties are entitled to examine the other party, but the complainant and the respondent cannot ask questions of the other person. The advisor, in many or most cases an attorney, conducts the examination in accordance with hearing rules. The decision-maker must decide if a question is relevant before it is asked. The decision-maker is appointed by the university and trained to conduct the hearing but will not be a university employee. The decision-maker does not have to be an attorney, but it is likely the person will be an attorney because of the skills that are needed.

Policy Committee members had questions about the appointment of the decision-maker and the advisors and suggested a process similar to selection of a panel of arbitrators would be useful. They also raised questions about bias, noting that everyone has biases. Ms. Hoogland stated that bias is inherent in cases of sexual misconduct and sexual assault because these are power relationships.

Mr. Cavalier agreed that bias is a human trait and is of concern in any decision-making process. A person needs the discipline to isolate bias from their decision making so that justice can be served. Someone must have a reason for challenging a decision as being biased. You have to look at the reason the person is offering.

Another surprising rule required by the new federal regulations is that any written statement is disregarded by the decision-maker if made by a party or witness who does not submit to cross-examination at a hearing.

It was suggested that (i) some terms used in the procedures might need to be defined or explained more explicitly and (ii) advisors should be given the opportunity to make a closing statement. Ms. Wright said that the group charged with developing the policies and procedures will revisit the issue of bias and the other suggestions. The Board authorized the process in June as a stopgap measure for six months while the group (Ms. Wright, Brad Roth as the Senate's liaison, Ms. Banks, and a representative from the General Counsel's office) develop permanent processes and procedures. The permanent procedures need to be in place in February 2021. In order to meet the deadline, the policy will have to be approved by the Board of Governors at its January 29 meeting.

A few other items from the new regulations are worth mentioning. All allegations of sexual misconduct or sexual abuse must go through the Title IX process. The cases that are found not to be within the purview of the Title IX regulations may be handled under the university's non-discrimination process. The university cannot access a party's medical records without the person's written permission. Questions about a person's past sexual behavior cannot be asked unless the purpose is to show that someone else is responsible for the criminal act.

There is a right to appeal the decision based on the following criteria: (i) a procedural irregularity that materially affected the outcome of the hearing; (ii) new evidence that was not reasonably available at the time of the determination that can be presented as an argument; or (iii) the Title IX coordinator, investigator, or decision-maker had a conflict of interest or bias or made a mistake of applicable law.

The procedures have an emergency removal process if there is an immediate threat to the physical wellbeing or safety of another person that arises from the allegation of sexual harassment. There is an opportunity to challenge the immediate removal.

Ms. Wright will present the information and seek comment from the Senate members at the October 7 plenary meeting.

[The guests left the meeting.]

*2. Report from the Chair:

- a. Census Day: September 15 is census day. As of September 14, overall enrollment was down 2.15% from last year. Provost Clabo expects we'll have an overall decline in enrollment of 2%. First-time-in-any-college Black student enrollment is up 57.6%. We have the largest Latino enrollment in our history. There is a large decrease in graduate students, especially in international graduate students. However the enrollment of international graduate students has increased in the last week. U.S. embassies in some countries have re-opened. Many international students have asked to defer enrollment to January.
- b. Search for the Dean of EACPHS: The Eugene Applebaum College of Pharmacy and Health Sciences has elected its members to serve on the search committee. Provost Clabo appointed representatives from the School of Medicine and the College of Nursing. Sheryl Kubiak, Dean of the School of Social Work, will chair the committee. Policy Committee appointed its representatives earlier in the search process. The Provost hopes the search will be completed in January 2021.
- c. Winter Semester Plan: Given what we know about the state of COVID-19 and development of a vaccine, the university will follow the same conventions for winter classes as for fall classes. As public health circumstances change perhaps we will be able to lessen some of the restrictions.
- d. Student Success Center: In response to problems that students have had in contacting the Student Success Center by phone, changes have been made to be more responsive to students' needs. Employees' shifts have been staggered to cover off-hours. The Provost asked that the center be open as many evenings as possible. It will be open the next two Saturdays. The center has implemented a full-triage phone model. The new AT&T phone system is scheduled to be installed at the end of October. Rob Thompson, Interim Chief Information Officer and Associate Vice President for Computing and Information Technology, is trying to expedite the installation. Provost Clabo has asked Associate Vice President for Enrollment Systems Dawn Medley to develop a staffing model that plans for this type of surge in January. The Provost's Office will monitor the length of time it takes for calls to be answered, the time before the calls are returned, and when the cases are closed.
- e. Public Health Update: The data about COVID-19 cases on campus is posted on the data dashboard. Eight new cases were diagnosed on campus last week. However, we do not have the results of all the tests carried out last week. The information will be updated as we receive the results. The university has been approved and contracted for Rapid Abbott testing machines for COVID-19 and for influenza A and B. Provost Clabo reminded Policy Committee that anyone may volunteer for COVID-19 testing at the Campus Health Center.

The center would like to test 150 people per week. Students, faculty, and staff can get the influenza vaccine at the health center and at outreach centers across campus.

3. CLAS Discussion of Ph.D. Programs and GTA Lines: Ms. Hoogland received information that a chair has been told that Ph.D. programs in the College of Liberal Arts and Sciences would be consolidated or eliminated and that cutting graduate teaching assistant lines was under consideration, even possibly for the winter term. When asked, the dean stated this would not be done. There is concern across the university about funding to maintain doctoral programs and to provide support for graduate students. The need for more support has to be addressed. Mr. Roth mentioned that there is a lack of appreciation for the role graduate teaching assistants play in teaching undergraduate students and their contribution to the overall undergraduate teaching mission. Ms. Beale pointed out that this issue has recurred as a worry under Dean Hartwell, in particular, and suggested that discussions about Ph.D. programs and budgetary needs have to begin at the ground level rather than top-down.
- *4. Representatives to the Board of Governors Committees: The Policy Committee made the following appointments:
 - a. Academic Affairs Committee: renee Hoogland, representative; Ewa Golebiowska, alternate representative;
 - b. Budget and Finance Committee: Paul Beavers, representatives; Linda Beale, alternate representative;
 - c. Personnel Committee: Ricardo Villarosa, representative; renee Hoogland, alternate representative;
 - d. Student Affairs: Naida Simon, representative; Jane Fitzgerald, alternate representative.
5. Early Academic Assessment/Midterm Grading Announcement: An announcement informed faculty of changes in the Early Academic Assessment program effective winter term. Adoption of Banner 9 will be completed at the beginning of the winter term, so some functions in the current Banner system will no longer be supported, including the EAA 'button' function. The new system allows uploading grades from an Excel spreadsheet. The name of the program has been changed to Midterm Grading.

Policy members noted that the announcement was worded confusingly: various faculty interpreted it to mean that faculty would now be required to provide midterm grades for all courses. Ms. Simon explained that EAA is required only for courses numbered 3999 and lower, though faculty who teach courses above 3999 may complete the EAA. (About 250 do so.) Provost Clabo confirmed there is no intention to require Midterm Grades beyond 3000 level courses. She will ask Darin Ellis, Associate Provost for Academic Programs and Associate Vice President for Institutional Effectiveness, to clarify and re-send the announcement.
6. Agenda for Meeting with the Executive Cabinet: The Policy Committee is meeting with the President's Cabinet on September 23. Policy and the President each have two agenda items for discussion. Policy members confirmed PC's two items as (i) shared governance and (ii) research and the impact of current restructuring in the School of Medicine. Policy members reviewed a draft of a memo setting these agenda items out with some explanation and agreed to send any edits/comments during the week so that the memo can be shared in a timely manner with President Wilson.
7. WSU Student Data Collection (Learning Analytics): Mr. Beavers said that there is concern about the data the university collects on students and the need for students to be informed about the uses of the data. The concern is partially a result of the committee working on the

Inclusive Access/First Day Pilot program. They have seen the data gathered to admit students in order to facilitate some of our assessment efforts. Librarians are very concerned about the scope of the information that is gathered through resources in Canvas, in Canvas itself, and admissions, how the data is gathered and how it is used. There is a great deal of concern about the textbooks and courseware packages and the kind of data they're gathering. SAGE, a corporation that supports higher educational institutions by providing educational services including courseware such as SAGE Vantage, has an agreement that it can be treated as an instructor on our campus and can gather data that can be identified down to the individual student.

Furthermore, the university should educate students to be aware of their privacy and how the data is being used. There should be a statement on the university website apprising students of the data we gather and the uses we make of it, but there does not appear to be any such statement. Mr. Beavers believes a committee should address these concerns. It is important to have information about how students are learning and which students need help to succeed and move forward, yet there has to be a balance. The chief concern is the data the university lets bleed out to corporations to help them develop their products: it is a value to them for which the university gets no credit. An excellent form of credit would be lowering the cost of materials for students. Students should be charged less for products that their choices help corporations develop. Provost Clabo will check what data privacy statements the university has. Ms. Beale has suggested that this issue should go to the Transparency Subcommittee that the Provost and Policy Committee created with Senate approval.

8. Undergraduate Research Opportunities Program: Mr. Roth, who chairs the UROP subcommittee, informed Policy that the subcommittee met with Sarah Kacin, Assistant Provost for Faculty Development and Faculty Success, Matthew Orr, Program Coordinator for Undergraduate Research, and Darryl Gardner, Student Success. Professor Donna Kashian, Professor of Biological Sciences and a member of the subcommittee, Mr. Orr, and Mr. Gardner met with Vice President for Research Stephen Lanier about opening laboratories for use by undergraduate students. VP Lanier suggested lab use is limited, so graduate students' use must be prioritized.

An RFP for undergraduate research grant awards for the winter term will be released in November. The subcommittee will meet with Mr. Orr and Mr. Gardner to review the RFP before it is finalized. The subcommittee will be involved in the final decisions in awarding the grants. The subcommittee is waiting to hear from Vice President Lanier about the Research Office's contribution to support the UROP program. Mr. Gardner and Mr. Orr will survey all possible sources in the university that might provide funding. Mr. Beavers added that the Budget Planning Council pushed for the Office for Research to provide a significant financial long-term commitment to support undergraduate research.

9. Principal Investigator Mentoring: Mr. Kessel reported that the Division of Research has a Research Mentoring Program for New Faculty. If a faculty member mentors another faculty member who joined the university within the last two years and that new faculty submits a grant proposal within a certain time period the mentor will receive \$2,000 for the effort whether or not the proposal is funded. The most recent deadline to submit a proposal was February 2020. Ms. Beale suggested that the Research Committee ask Vice President Lanier to give a presentation on how the program is working.

Approved as revised at the Policy Committee meeting of September 21, 2020