

## EXECUTIVE COMMITTEE MINUTES

**Present:** Bender, Fech, Hanrahan, Konecky, Lee, Purcell, Reisbig, Rudy, Vakilzadian, Woodman

**Absent:** Dawes, Leiter, Steffen

**Date:** July 19, 2016

**Location:** 203 Alexander Building

**Note:** These are not verbatim minutes. They are a summary of the discussions at the Executive Committee meeting as corrected by those participating.

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### 1.0 Call to Order

Woodman called the meeting to order at 2:30 p.m.

### 2.0 Susan Foster, Assistant to the Chancellor, Institutional Equity and Compliance

#### 2.1 Title IX Procedures

Woodman reported that at a recent conference of Big Ten universities there was discussion of some problems with Title IX procedures and the Executive Committee wanted clarification on UNL's procedures. He noted that AAUP has created a document of best practices for Title IX procedures and wondered how UNL's procedures compare with the AAUP document. Foster stated that her office is working hard to make sure that we have good processes in place. She noted that universities that receive federal funding must comply with Title IX and the Office of Civil Rights (OCR) regulations.

Foster stated that she agrees with AAUP's recommendation that academic freedom needs to be protected and her office has taken steps to assure that this occurs at UNL. She reported that if a complaint concerns discussions that occur in a classroom she engages assistance with Academic Affairs to look into the matter, and pointed out that she has worked extensively with former Associate VC Perez to make sure that academic freedom issues are preserved. She noted that an example is when a student may object to material presented in a class, but if it is part of the coursework of a class and is not sexual or racial harassment and no students are singled out it is not considered a violation of Title IX. She stated that students need to be educated on the difference between academic freedom and sexual harassment.

Lee stated that he thought there needed to be a persistent pattern of behavior over a period of time for a complaint to be made. Foster pointed out that a pattern of behavior could indicate a violation, but her office also responds to single complaints that are made.

Woodman asked if people will get to the point that they do not want to talk about issues in their classes. Foster stated that we need to educate our campus community to get them to understand the differences between freedom of speech, academic freedom, and harassment and she would like the Faculty Senate's assistance to clearly define these

terms. Reisbig pointed out that the Title IX reporting is a new system that is providing people the opportunity to report what they think might be a violation. However, like all new systems it needs to function first before people learn what is considered a reportable violation.

Foster reported that the bulk of complaints her office receives are about sexual harassment but the range of the complaints is huge. She noted that no issue is downplayed in the office and her staff does the best they can to treat everyone fairly.

Konecky stated that the Office of Institutional Equity and Compliance needs to be a more proactive partner in letting faculty members know what constitutes a Title IX violation. Foster stated that her office is trying to be more proactive by meeting with departments and colleges. She noted that she has three sessions scheduled in the Law College to discuss Title IX. Woodman stated that examples of what constitutes freedom of speech and violations of Title IX should be presented to the faculty for them to get a better understanding of the issue. He pointed out that context matters so much in these cases. Foster stated that this is why she would like to work with the Faculty Senate and Academic Affairs to help educate the campus. She noted that it would be helpful to get examples from professors and said that AAUP also has some suggestions.

Woodman stated that he would not disagree with the procedures, but they are open to a lot of interpretations and he has concerns for faculty members being accused of violations. Foster pointed out that generally when she meets with a faculty member she will ask the chair or someone from the department to also attend the meeting. The faculty member is informed of all the options they have at the beginning: they can talk to her then, respond to the allegations in a few days, or contact an attorney. Vakilzadian asked if a faculty member refuses to speak to her whether this is considered an acceptance of guilt. Foster stated that it is not. Woodman asked if the charges are put in writing to the faculty member. Foster stated they are not initially provided in writing. Woodman noted that the Academic Rights & Responsibilities Grievance procedures state that people will be informed in writing. Foster pointed out that the Academic Rights & Responsibilities Committee is separate from her office. She stated that before she sends a letter she wants to give a professor the opportunity to respond to her in person, as receiving a letter can sometimes be difficult to receive without previous warning about the issue. Thereafter, IEC will provide a letter setting forth specific allegations. She stated that she tries to make the initial contact by phone or in person and at that time will answer any questions. Woodman asked if a faculty member has time to respond to allegations. Foster pointed out that they can have a few days, but federal regulations require the university to respond within 60 days. She stated that her office cannot assist in getting an attorney for a faculty member, but she has no issues with faculty members getting a lawyer.

Foster noted that credibility is a huge issue in dealing with Title IX cases. She stated that it is important for her and her office staff to build a sense of trust between the people involved in any complaint. She pointed out that face-to-face interactions are quite different than when someone prepares a written response.

Woodman asked if Foster can make recommendations that put someone at risk of losing their job. Foster stated that she can recommend employment sanctions, but she cannot actually fire someone.

Woodman stated that he has concerns with cases that are a fine line between academic freedom and saying something that is inappropriate. Foster pointed out that harassment must be unwelcome, sexual or racial in nature, and creates a hostile environment.

Woodman asked if Foster's office is investigative and where she stands on cases being investigated. Foster noted that her office must be neutral and fact finding and also educational. She pointed out that in order to be fair in making decisions on a case she can't be an advocate for either party involved and must remain absolutely neutral. Lee asked what assurances there are that cases are investigated fairly. Foster stated that the key is to hire highly qualified investigators and train them well. She likes having attorneys on staff because they know how to find out the facts. She noted that she reviews every finding that leaves her office. She stated that her office will be producing a report citing statistics of cases.

Rudy asked who Foster reports findings too, and if they are against a faculty member, do they have the right to appeal or dispute an allegation. Foster stated that faculty members have the right to appeal under the Academic Rights & Responsibilities Committee. She reported that the findings go to the person in charge of Academic Affairs, IANR, or Human Resources. She pointed out that she has no power to give out sanctions. She can only make recommendations.

Fech noted that there is a stigma of being investigated and asked if the process is kept confidential. Foster stated that in some cases it may be helpful to have another faculty member from the department or the chair be involved to help provide additional information. Fech asked if other faculty members in a department would know about the investigation. Foster stated that her office would not notify anyone in the department. She said that sometimes Academic Affairs is notified if an allegation has been made against a faculty member, but the nature of the complaint is not revealed. She pointed out that she believes in keeping all cases highly confidential. She stated that she urges people involved in a case to keep the matter confidential because there is the potential for someone to suffer unjust negative consequences.

Fech asked whether retribution can be made in some way if a faculty member is falsely accused. Foster pointed out that there is no language in the current policy that explicitly prohibits someone from knowingly filing a false complaint, and she would like to see this changed because people's reputations can be damaged by false accusations. She noted that a faculty member could address false allegations legally through an attorney. She pointed out that in sexual harassment cases it is difficult to show that someone filed a false complaint.

Lee asked if Foster could explain the "Dear Colleague" letters that are occasionally sent to faculty members. Foster stated that these letters can be found in the Office of Civil

Rights reading room online and are published in the Federal Register. She receives a copy of these letters and distributes them. Lee asked whether the information provided in these letters carry much weight. Foster stated that this is currently up for debate in the courts, but we are treating them like they should be followed because we receive federal funding.

Woodman noted that there was a case at UNL recently that resulted in a faculty member being removed from serving on a graduate student's committee and said that this is a sanction. Foster pointed out that this was not her decision, it was the department, and it was done to protect the parties involved.

Purcell asked if Foster would like the Executive Committee to form a committee to work on proposed language for the Title IX policy. Foster stated that working with the Senate will help and she proposed that language on academic freedom and free speech needs to be added to our Student Code of Conduct and to the Title IX procedures. She stated that she will be happy to work with the committee. Purcell asked if UNL procedures must follow the Board of Regent's procedures. Foster noted that the Board wants the procedures to be the same for all of the campuses.

Woodman asked if an involved person has to make the complaint or can someone who reads of or becomes aware of a violation make a complaint. Foster reported that if it affects a campus member her office needs to look at the situation regardless of who reports it. She pointed out that in some cases her office might not have jurisdiction, but the campus does have responsibility in trying to get help for the victim. She noted that if a faculty member has concerns, even if it is hypothetical, they can give her a call.

Hanrahan suggested changing the procedures to allow faculty members three days to respond to an allegation, or they could waive this, after they have been informed in person. Foster stated that she welcomes suggestions that would make the process better. However, she would like to have further discussion on having a three day window before making this part of the procedures.

Hanrahan asked if any of the recommendations from her office have been rejected. Foster noted that all recommendations are reviewed by her before they leave the office. A recommendation becomes final if a person does not request a review of the case. She stated that the Chancellor wants to be informed anytime there is a suspension or expulsion of an employee. She reiterated that her office can only make recommendations based on facts. Ultimately it is a person's supervisor or a higher administrator who makes the decision to take action. She noted that a faculty member could go to the Academic Rights & Responsibilities Committee if they disagree with the decision that is made.

### **3.0 Announcements**

#### **3.1 Letter to President Bounds**

Woodman reported that he sent a letter to President Bounds enquiring about President Bound's suggestion to have the Faculty Senate Presidents participating on the Board of

Regents Academic and Business Affairs subcommittees, but has not received a response yet.

**4.0 Approval of June 21, 2016 Minutes**

Woodman noted that he wanted to make a change to a statement he made in the minutes and read his revisions. Lee moved for approval of the minutes as revised. Motion seconded by Vakilzadian. Motion approved with one abstention.

**5.0 Unfinished Business**

**5.1 UNL Bylaws Revisions**

The Executive Committee reviewed suggested revisions to the UNL Bylaws and agreed to continue reviewing the changes at the meeting on August 2.

**6.0 New Business**

**6.1 COIA's Letter to Support Banning Student-Athletes Who Have Committed A Violent Crime**

Issue postponed due to lack of time.

The meeting was adjourned at 4:37 p.m. The next meeting of the Executive Committee will be on Tuesday, August 2, 2016 at 2:30 pm. The meeting will be held in the Faculty Senate Office. The minutes are respectfully submitted by Karen Griffin, Coordinator and Allison Reisbig, Secretary.