

University of Washington
Faculty Council on Student Affairs
5 May 2015, 1:30 pm – 3:00 pm
Gerberding 26

Meeting Synopsis:

1. Call to Order
 2. Approval of the Agenda
 3. Approval of the Minutes from 7 April 2015
 4. Student Conduct Code (Exhibit 1)
 5. Adjourn
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1) Call to Order

Treser called the meeting to order at 1:33 p.m.

2) Approval of the Agenda

The agenda was approved as written.

3) Approval of the Minutes from 7 April 2015

The minutes from April 7th, 2015 were approved as written.

4) Student Conduct Code (Exhibit 1)

The council hosted numerous invited guests to participate in a discussion concerning proposed revisions to the University of Washington's Student Conduct Code (SCC). *For a complete list of those present, see council membership at the end of this document.

Treser opened the discussion by explaining that he hoped this FCSA meeting might be useful for providing members of the council, as well as guests, an overview of the anticipated problems perceived with the proposed revisions to the SCC. He noted that a lot of hard work has taken place in an effort to revise the SCC in compliance with Title IX federal regulations, and that the council meeting will provide an avenue for council members and guests to offer any recommendations for troubleshooting the highlighted issues. He explained that the council meeting will not be used to solve major overarching problems, nor to formulate code language. Treser explained he has designed a PDF document, to be projected during the meeting, for guiding discussion (Exhibit 1).

Treser noted there are elements missing from the proposed SCC for bringing the university into compliance with federal Title IX regulations. He explained he would like the guests to highlight the issues as best they can. Rebecca Deardorff (Director of Rules Coordination, Rules Coordination Office) noted she can provide an overview of the timeline for implementing the revisions, which is one large piece of the associated issues.

Timeline for implementation

Deardorff noted the UW is coming up against a July 1st, 2015 deadline in which a number of Title IX compliance pieces must be in place. She explained the university is now considering “emergency rule making” in order to meet this deadline. Emergency rules, as defined by the Rules Coordinating Office’s website, occur in a specific circumstance: “when a rule must become effective before a permanent rule can be adopted, the University may adopt the rule on a temporary basis as an ‘emergency’ rule. Emergency rules bypass the preproposal and proposal notices and the public hearing, which are requirements for permanent rules.” Deardorff explained that emergency rules are valid for 120 days, at which point they will sunset. The process for final adoption is a very long process, she explained - especially as the UW generally goes into a period of hiatus during the summer. She clarified that the timing problems associated with revising the Student Conduct Code may be theoretically solved by utilizing an emergency rule, as the new deadline for implementing the SCC would fall in January of 2016.

Treser explained that emergency rule making allows time for revising the SCC effectively after having taken UW community input into account, as it will put the university into compliance with federal regulations for a short duration of time. He noted the FCSA, which is a fundamental body of review for proposed changes to the SCC, will no longer need approve the code changes before the summer of 2015 begins. Instead, the council will provide guidance for its revisions, and review the code language again at the onset of the 2015-2016 academic year.

Treser explained proposed revisions to the SCC include two “tracks” for dealing with Student Conduct cases. One track is designated for Title IV cases (alleged sexual misconduct/discriminatory harassment), and the other is designed to encompass all other cases. It was noted each track would include its own board (or boards).

Question 1 – Administrative burden/ support

Treser explained there has been an escalating amount of Title IV cases in recent years, and that under the current Faculty Appeals Board model (FAB), chairs of the boards are required to do a large amount of administrative work which includes bearing responsibility for working with sensitive inquiries and materials.

Treser explained that the first question to be answered by the assembly today is if a good deal of a chair’s work may be completed by a hired professional hearing examiner. Suite (president’s designee, Vice President for Student Life) noted the answer to that question is yes, and explained that funding is in place for this type of support for the next academic year. He explained a hearing examiner would take care of sending initial notifications to students, drafting board decisions, and generally assume most of the administrative burden associated with Student Conduct cases – thus greatly minimizing the burden on involved faculty and FAB chairs. After question, Suite explained this may or may not be a fulltime position within the UW, but regardless, a hearing examiner will be available to provide assistance for each hearing. Suite noted they are also looking at a court reporter to be hired for case transcription.

After question, Suite replied his office is looking into a hearing examiner for Title IX cases only.

Treser asked where within the UW the hearing officer position will be housed. Suite noted he does not believe the position should reside in Student Life, because this is where the initial hearing originates. He recommended the hearing officer be housed in the Attorney General’s office. Nairop (Division Chief, UW Division of the Attorney General’s Office) noted this is a University of Washington position, and AG

lawyers are not employees of the university, thus it would be inappropriate. The question was unresolved.

There was question of how many hearings the FAB handles on average per academic year. Gautham Reddy (current FAB co-chair) explained this year there has been 15 hearings, with four more cases to come, for a total of 19. Lewis explained there were 22 hearings last year.

Question 2 – Informal process

Treser explained that the current code clarifies that the intake of a case, the investigation, and prosecutorial functions are all handled by the Community Standards and Student Conduct office (CSSC), noting that all appealed cases go to the Faculty Appeals Board to be handled by that body. He questioned if this process was ideal, or if it might be improved upon.

Suite explained that on a national scale, the UW conduct process is more or less the standard for collegial institutions. However, he mentioned there has been some discussion of bringing in an outside consultant to assess the overall efficiency and appropriateness of the UW's current conduct process. It was generally agreed upon that the process should be assessed. It was clarified that once a student appeals a decision of the CSSC, a completely new and separate hearing takes place involving the FAB. Suite explained that academic units also have the ability to hear conduct cases, and that if a case is appealed, it will go to the FAB the same as a case taken in the CSSC. Therefore, conduct cases take place at multiple locations on UW campuses, and if any are appealed, those wind up in front of the FAB (under the current model).

Reddy expressed concerns that the CSSC and other conduct offices in the UW branch campuses have a large volume of work, and in some instances it is difficult for them to process every element of a conduct case which may be beneficial to the case's conduction. Reddy noted that this issue has manifested in the form of key witnesses not being interviewed, when doing so might have been for the benefit of the case. He explained for this reason, FAB members feel that a professional hearing examiner is needed, to assume a piece of the administrative responsibility, and to allow for a better understanding of the case at hand, which ultimately may lead to a completely different decision on behalf of the FAB. Suite noted his team is able to work fairly fast in investigating options for an outside consultant to appraise the UW's conduct system – possibly by next fall or earlier. Reddy expressed additional concerns based in possible conflicts of interest with conduct processes, noting timing delays and the fact that the university president has authority over FAB decisions.

Question 3 – Structure

Treser noted the FAB currently hears all appeals of student conduct cases across the UW. He questioned if this approach is appropriate, or necessary, and asked the council to ponder any possible alternatives.

He explained that the pressure for setting up two tracks (based on type of conduct infraction) had stemmed from concern over high administrative burden. He explained the council should consider the fairness of the structure, as well as its overall compliance with federal law.

Suite explained that an outside consultant can provide alternate proposals for the structure after having reviewed the system. He noted that the challenge of having only one board (as opposed to the proposed two tracks) is that students are prohibited from sitting on the Title IV cases, though their inclusion in the

conduct process is necessary for other cases. He noted that according to the U.S. Department of Education Office for Civil Rights (OCR), the number of Title IV complaints nationally is on the rise each year, with a heavy increase recently from 2013-2014. Thus, there are indications that the number of Title IV cases at the UW are likely to grow in number, and faculty will sustain an increased burden as the number of times they are called to preside over a case in one academic year increases concurrently.

Treser noted if the UW implements two separate types of boards, there will be an increased burden on the Faculty Senate, ASUW, GPSS, and other university groups as they grapple with recruiting and appointing faculty, students, and possibly professional staff in greater numbers to fill them. He noted there are questions surrounding release time, departmental support, and time away from research and teaching for faculty who serve, as well.

O'Neill noted she is concerned for the burden on serving faculty's time; she explained if the number of cases warrants it - administration should consider working with unit deans or chairs to have serving faculty, at the very least, distinctly recognized for their service. She noted the task of the Faculty Senate chair in appointing faculty to the FAB is difficult to accomplish already, and increasing membership on these conduct boards (as proposed) will place an even larger burden on future Faculty Senate chairs to identify and recruit faculty for them; she noted this will be a major problem in the near future.

Reddy noted the administrative tasks associated with conducting FAB hearings (pre and post-hearing) takes 30-40 hours to complete. Fabien commented that he had personally read one of the FAB decisions in its entirety, and it was extremely long and detailed. He noted the task of writing such a document must have been terribly time-consuming, and is likely not something faculty would desire to do. Reddy reiterated that hiring a hearing examiner is necessary to deal with the huge amount of administrative workload associated with the hearings. He mentioned he would prefer an examiner be available for every case (not just Title IX), though he understands there are funding constraints.

Treser also noted faculty should get credit for their service to the university in participating on the FAB and other conduct boards, and not have this participation held against them. He mentioned granting release time for faculty who are actively serving on boards is something to be considered, as currently there are few tangible incentives for faculty to serve.

Suite noted that in the past, there had been a recommendation that the FAB be expanded to include both faculty *and* professional staff. Treser noted this is one of the questions relating to structure to be considered by the council and guests today.

O'Neill mentioned that members of the Title IX panels will require special training, whereas non-Title IX cases often deal with conduct infractions that faculty generally have experience evaluating (cheating, plagiarism, etc.).

After question concerning why the UW is responsible in the first place for mediating serious (criminal) offenses instead of the local police, Lewis explained that the U.S. Department of Education has instructed higher education institutions that they are the best-suited to deal with Title IX cases involving their students, especially in making determinations based on if one student's behavior is affecting another student's ability to access the university and its educational programs. Suite noted that higher education institutions are *required* to inform students of their right to decline a police investigation, and also required to adjudicate cases in-house as they arise. These practices have been ordered by the federal government, it was noted.

Reddy explained that the amount of cases from UW Bothell and Tacoma compared to UW Seattle is a much smaller number. He noted it is very important that students have the ability to appeal for a full review. A member voiced concerns over penalties for FAB members who are involved in controversial conduct cases, as they had experienced backlash and felt threatened after delivering a controversial decision as part of the board. A member also recommended that professional staff not be included on the FAB because he felt they (professional staff) have even less protections against “backlash” than faculty.

Question 4 – Components to be included in code vs. written in administrative policy

It was noted that one main goal in retooling the Student Conduct Code is to make it easier to read and understand, especially in assuring that students easily understand their rights before, during, and after conduct cases. For this reason and others, only absolutely necessary pieces of information should be included in code language.

Treser explained that stakeholders need to establish what elements will be written into code language. A member noted that in their opinion, detailed logistics do not belong in the code, but certain “protections” should be included. The member added that funding practices are also not appropriate information to be included in code language for the SCC.

A member explained that he fears if administrative policies and structures are not included in code language, it is possible they will not be enforced, and he urged that those present take this into consideration.

Treser asked the group if they feel the final Student Conduct Code should include language that states that a hearing officer is required to be involved in conduct cases. After discussion, the question was not resolved.

A member explained that leaving out certain conduct process-related pieces when drafting code language has the potential to cause problems when conduct cases are actually carried out, noting that he has seen issues related to this in past cases. He noted that he hopes that past discrepancies between the FAB and other members of the UW conduct process provide indicators for what needs to be defined in code language.

Question 4 – Next steps

Treser explained that the council will not be involved in the act of redrafting code language to be in-line with recommendations, and that this would be carried out by administration. He added that he plans for the council to continue giving recommendations and feedback on the SCC in their June meeting. He explained the council will also resume work on the SCC in the fall of 2015-2016, with a goal to pass it on to the Senate Executive Committee in their first meeting. He urged members to send comments or recommendations to him, which he would forward on to other stakeholders and administrators.

A GPSS (Graduate and Professional Student Senate) representative explained the feedback of that body was centered on a desire for the SCC to include gender-neutral language.

5) Good of the order

Council members expressed interest in receiving any SCC-related documentation or questions well in advance of meetings, so they may be well-prepared to offer feedback.

6) Adjourn

Treser adjourned the meeting at 3:00 p.m.

Minutes by Joey Burgess, jmbg@uw.edu, council support analyst

Present: **Faculty:** Mabel Ezeonwu, Bruce Hevly, Chris laws, Sara Lopez, Jelena Svircev, Chuck Treser (chair), Brian Fabien, Anthony Gill
Ex-officio representatives: Hailey Badger, Martha Tran, Jewell Evenson, Christine Tawatao
President's designee: Denzil Suite
Guests: Elizabeth Lewis, Norm Beauchamp, Kate O'Neill, Rolf Johnson, Rebecca Deardorff, Lorna Hardin, Karin Nairoop, Amanda Paye, Ellen Taylor, Gautham Reddy

Absent: **Faculty:** N/A
Ex-officio representatives: N/A

Exhibits

Exhibit 1 – fcsa_meetingpowerpoint_guide_050515

Faculty Council on Student Affairs

5 May 2015

Room 26 Gerberding Hall

Agenda

1. Call to Order
2. Welcome / Introductions
3. Approval of the Agenda
4. Approval of the Minutes from 7 April 2015
5. Student Conduct Code
6. Adjourn

Student Conduct Code

- Introduction – Needed revisions
- Process so far
- Issues raised
- Ground Rules / Anticipated Outcome
 - Agreement on how to proceed
- Next steps

Student Conduct Code

Issues

- Initial Investigations
 - Investigations vs. Prosecutions
- Faculty Appeal Board (FAB)
 - Administrative Burden
 - Hearing Officer
 - Clerk / Stenographer
 - Equity and Fairness to all Parties
- Proposed Revisions
 - Structure & Process
 - Title IX Misconduct vs. Academic Misconduct
 - Faculty role(s)
 - Substantive provisions
 - What needs to be in the code vs. what can be handled by an administrative policy

Next Steps

- Emergency Rule Making
- Reconciling the code language
- Developing policy to improve/implement the process
- Assignment of tasks

Adjourn

- Thank you!