

Senate Council
December 19, 2016

The Senate Council met in a special session at 3 pm in 103 Main Building on Monday, December 19, 2016. Below is a record of what transpired. All votes were taken via a show of hand unless indicated otherwise.

Senate Council Chair Katherine McCormick called the Senate Council (SC) meeting to order at 3:00 pm.

1. Minutes and Announcements

The Chair noted that there were no minutes to review. The Chair offered one announcement regarding the success of the recent graduation ceremonies. SC members responded in agreement.

2. Discussion on Application of *Administrative Regulation 6:2*

The Chair initiated a discussion on the session's only agenda item, the application of AR 6:2 ("Policy and Procedures for Addressing and Resolving Allegations of Sexual Assault, Stalking, Dating Violence, and Domestic Violence"). Blonder suggested the group also discuss AR 6:1 ("Policy on Discrimination and Harassment"). The Chair noted she had copies of AR 6:1 to distribute to the group if they wished to discuss it, and she requested an amendment to the agenda be made to include discussion of AR 6:1. The following documents were distributed to the group to facilitate discussion of AR 6:1 and 6:2:

- Administrative Regulation 6:1
- Administrative Regulation 6:2
- Governing Regulation, Part I: "The University of Kentucky (Definition)"
- Governing Regulation, Part X: "Regulations Affecting Employment"
- University Senate Rules, 1.4.4.2 (regarding the Senate Advisory Committee on Privilege and Tenure (SACPT))
- Memorandum from Bill Thro, General Counsel, and Marcy Deaton, Sr. Associate General Counsel, to Jennifer Bird-Pollan, Chair of the ad hoc Faculty Committee on AR 6:2, regarding due process in University sexual misconduct disciplinary proceedings

Wood noted that SR 1.4.4.2 had been recently updated but the distributed version did not reflect the revisions. Wood was asked to locate an electronic copy of the revised SR to share with the group. Jennifer Bird-Pollan, a faculty member in the College of Law and the Chair of the ad hoc Faculty Committee on AR 6:2, was in attendance to present on behalf of her committee. Bird-Pollan stated that the committee is still in the information-gathering stage and is examining various ways to improve procedural administration of AR 6:2. Grossman requested an estimate as to when the committee's work would be done, and Bird-Pollan responded that a draft report should be complete by March. Blonder suggested that the ad hoc committee's charge be expanded to include a review of AR 6:1, given that some investigations involving faculty can fall subject to this AR. The Chair asked Blonder if she would like to make a motion stating such. Blonder **moved** to expand the charge of the ad hoc Faculty Committee on AR 6:2 to also include a review of AR 6:1. She noted that AR 6:1 does not include a faculty panel to which the accused can appeal. AR 6:1 defines the prohibited acts but no detail is provided regarding the procedure for punishment or appeals. A **vote** was taken and the motion **passed** with none opposed.

SC members continued their discussion of the lack of procedural details in AR 6:1, with the comment that sanctions must be defined in a different AR. Blonder noted that sanctioning is part of the procedures in the Title IX office, but Grossman stated this may not be captured officially in writing. Cross stated that the SC should be able to examine any regulation and should not be limited to AR 6:1 or 6:2. Blonder replied that a review of the regulations is important, but the larger issue is that the University

does not seem to follow these regulations. There are cases of investigations of faculty members that resulted in the faculty accepting a settlement from the University without ever utilizing the options available to them per these regulations. The Chair suggested the Senate Advisory Committee on Privilege and Tenure (SACPT) as an avenue for faculty in need of guidance. Wood noted two known cases of faculty utilizing AR 6:2 when sanctions were issued without review. Blonder questioned if the administration is officially granted the right to offer settlements to accused faculty members, and the Chair cited page seven of GR X. Blonder stated that individuals may not understand the options available to them, and faculty may think it is to their advantage to leave the University. She suggested providing details to faculty regarding their available options and the support that the SACPT could provide if sought.

Wood was able to locate an electronic copy of revised SR 1.4.4.2 and shared it via email with SC members. She stated that, previously, non-tenured faculty and employed students received more protection under the SR than did tenured faculty members. The revised version of the SR specifically states that the rights guaranteed in the SR are applicable to tenured faculty and shall not be impeded. Grossman recommended the ad hoc committee include a reference to the SACPT in AR 6:2. The Chair noted that page seven of GR X includes a reference to the SACPT, but faculty may not be aware of this. Blonder suggested the preparation of an information sheet that could be provided to faculty members when they are approached by Administration with the offer of a settlement. The Chair offered to provide this information on the Senate website, if SC members wished to act on this suggestion. Wood stated the issue of lack of due process for faculty members should be addressed before acting on this suggestion. Bird-Pollan thought posting this type of information on a website might be the best approach, due to confidentiality issues. The Chair noted the SC's responsibility to make faculty aware of their options in cases such as these, and Blonder recommended an email be sent to all faculty including any useful information.

Schroeder questioned the power the SACPT would have if a faculty member felt his or her right to due process had been violated. Grossman replied they would be able to make a recommendation to the President. McGillis suggested the new faculty orientation as an option to distribute information, but Grossman felt faculty would not remember much from the orientation. He recommended putting the information online, as faculty would be more likely to perform a search for information if it were to become relevant to them. Wood shared a concern that faculty members may not dispute allegations made against them due to the expense of legal fees and a lack of resources. Bird-Pollan asked the group if they felt accused faculty should have representation provided for them by the University. Wood responded that it would be expensive, but it might be an option to consider.

Blonder shared that Brown University has an advisory panel, including faculty, deans, and students, which advises the Title IX office. She suggested the creation of a separate panel at UK, including faculty, which would advise the Title IX office, provide oversight, and be available to faculty as needed. Grossman stated this seems like the responsibility of the SACPT, but Blonder replied that the SACPT would not be involved unless the proper investigative procedures were not followed. Blonder stated the current issue is that the case referenced in the newspaper over the weekend would fall under AR 6:1, in which sanctioning procedures are not detailed. Schroeder echoed the recommendation of an informational webpage for faculty, with carefully defined keyword searches, to make the information easy to find. It was suggested that the ad hoc committee draft language for a webpage, to include a prominent reference to the SACPT. Bird-Pollan agreed to work on this with her committee.

Schroeder stated it may be helpful to have more information regarding the role of Associate Vice President for Institutional Equity Patty Bender (Office of Institutional Equity and Equal Opportunity), perhaps a discussion with her and the SC. The redacted cover letter distributed to the SC seems to suggest the recommendation was made by Bender and does not reference the investigative process. Blanton confirmed that an investigation had occurred, and the document distributed to SC members is only the cover letter to the investigative materials. Schroeder noted that there is no indication on the cover letter that any other materials were provided to the college Dean to support the recommendations in the letter. Wood recommended that the investigative file be included with a formal recommendation. Blanton stated that the faculty member would have to waive his rights to privacy before anything could be released. Cross noted that the faculty member would also have to waive any claims against the University, along with his right to privacy, which Blanton confirmed. Blanton was unsure if the faculty member would have viewing access to the investigative report without waiving confidentiality rights.

Mazur mentioned a case in which a faculty member was denied details regarding allegations made against her. Mazur stated that due process should allow the accused person the right to detailed information regarding the accusations made against him or her. Mazur further stated, that this is included in the GR, and the SACPT should be allowed to intervene if the faculty member's request for this information is denied. The Chair reiterated Schroeder's suggestion to ask Bender speak to with the SC so that the SC can gather information regarding the investigative process and disseminate this information to faculty. Schroeder also suggested each SC member hold informal discussions with their faculty members to assess how much is known regarding the existence and/or charge of the SACPT. The Chair suggested the involvement of the Office of Faculty Advancement to help coordinate the release of this information at new faculty orientations.

Blonder continued the discussion regarding the role that individuals play in these cases and questioned if the larger issues of academic freedom and free speech are considered in the context of Title IX investigations. Blonder also wondered if the First Amendment Center should have any role in these processes. Cross replied that they have typically not involved themselves in these situations, but it could be an option to include them.

The SC also discussed a recent situation in which a student submitted a video including profane language directed at the professor, and the student was ultimately protected under his First Amendment rights. The point was raised that the faculty member involved in the investigation reported on by the Herald Leader on Friday and over the weekend was not being granted the same protection. Blonder stated that the situation involving the student set a low standard for protection under the First Amendment, but the standard does not seem to be the same for everyone.

Wood stated that due process should not be such a complicated issue and suggested the ad hoc committee prepare a simply written document explaining the rights of the accused. Bird-Pollan replied that her committee has found the process to be complicated, but perhaps not unduly complicated, and the committee has not been able to identify any unnecessary layers in the process thus far. What may be helpful is a document for the victims to help them understand the procedures, as they will not be involved in any way other than offering testimony. Schroeder agreed that it would be helpful for the victims to know in advance that they will not hear details of occurrences during the investigative process.

Senate Council
December 19, 2016

Bailey redirected the group back to the earlier suggestion that the Chair should contact all faculty members to inform them the SC has met regarding these issues. Mazur commented that it is important for faculty to know the SC is engaged in these discussions and has been for some time now. These discussions are not just being initiated in response to one recent situation. Wood noted that many faculty members may not realize the SACPT addresses issues related to the privilege of scholars and not just promotion and tenure. This is important information to include in the email communication.

SC members discussed the possibility of a Faculty Ombud as something useful to pursue. Wood commented that someone in such a position would need to be a constitutional lawyer, or else this could ultimately be detrimental to faculty who seek assistance. Grossman reminded the group of a proposal several years ago to create the position of a Faculty/Staff Ombud, similar to what the University of Louisville and University of Cincinnati have in place. The proposal was carefully researched and written before being presented to the President. It was the memory of the SC members who were on the council at that time that the President responded he would rather have procedures put in place that would make such a position unnecessary. Grossman suggested waiting for the ad hoc committee's report before moving on any proposal for the creation of such a position.

There being no further items for discussion, Wood **moved** to adjourn and Schroeder **seconded**. A **vote** was taken and the motion **passed** with none opposed. The meeting was adjourned at 4:39 pm.

Respectfully submitted by Katherine M. McCormick,
Senate Council Chair

SC members present: Bailey, Blonder, Grossman, Lauersdorf, Mazur, McCormick, Porter, Schroeder, and Wood.

Invited guests present: Jennifer Bird-Poll~~a~~en.

Other guests present: Linda Blackford, Jay Blanton, Al Cross, Joe McGillis, and Lisa Wilson.

Prepared by Joanie Ett-Mims on Thursday, December 22, 2016.