**Faculty Senate Minutes**

**Special Session**

April 20, 2021

Via Microsoft Teams, 3:00-5:00 pm

***Present***: Attendance not recorded

***Excused or Absent***:

***Guests:***

Call to order – 3:00 p.m.

Policies 162 – *Title IX Sexual Harassment* / 165 – *Discrimination, Harassment, and Affirmative Action* / 168 – *Complaints under the Utah Protection of Public Employees Act*

Policy 162

* Overall (Comment 31) – No discussion
* Section 5.4.7.1 (Comment 11)
  + Policy 165 does not allow an advisor but Policy 162 does. Faculty Senate wants to make sure that Policies 162, 165 and 168 all allow for an advisor. Need to be consistent across all policies in regards to an advisor.
* Section 5.8.3.4 (Comment 21)
  + Clarify definition for “prompt access” in regards to flexibility for very complex situations such as adding “10-15 business days” or perhaps similar to the exceptions and extensions language in the current Stage 1 draft of Policy 646.
* Section 5.8.5.3 (Comment 23)
  + Not much we can do with the “hearsay” matter. It is permissible under federal law if it is relevant. Courts have very complicated rules about hearsay. If it is relevant, it is allowable.
  + Add a definition of “hearsay.” Check the Title IX regulations for a definition of “hearsay” and cite.
* Section 5.8.6.1 (Comment 26)
  + Recommendation made that a separate body from the hearing panel should be the one imposing disciplinary actions.
  + Adding another layer of complexity to determine the disciplinary actions could be problematic.
  + Discussion on who is the body that issues sanctions. Need one entity or panel to oversee sanctions.
  + Why is the hearing panel handling all functions such as investigating, adjudicating, and determining any sanctions? Typically, in policy this is broken up across several entities. Hearing panel should be separate from the decision maker and consider defining the decision maker.
  + Specify the “higher authority.”
  + An appeal is separate from the initial decision-making body.
  + In Policy 646, the appeal committee grants or denies the appeal, then a separate reevaluation committee recommends for or against tenure or rank advancement.
  + Section 5.6.14 provides a list of the relevant "sanctioning officials." The hearing panel defers to the sanctioning official's recommended sanction unless it's "clearly unreasonable under the circumstances."
  + Be sure to use correct terminology when referring to decision makers and is consistent across policies.
  + Consider adding a specific period between deliberation and decision making to eliminate hasty decisions.
  + The hearing panel is the decision-maker regarding responsibility ("did X do it?"); the sanctioning official decides the consequences in the event that the panel says the respondent is responsible for the misconduct. The hearing panel defers to the sanctioning official's recommended sanction unless it's "clearly unreasonable under the circumstances." The sanctioning official’s decision is almost 100% final.
  + Request policy drafters reanalyze the process from the perspective of an innocent respondent who is falsely accused. Is the process fair to that person? Reiterate the allowance of an advisor during the hearing. Provide a list of rights of the complainant and respondent and a flow chart of the process.
  + Attach flowchart referenced by David W. Scott to comments.
  + Emphasize a holistic view of the accused person and what rehabilitation/remediation, training, and mentoring as opposed to or prior to sanctioning.
  + If it is determined that the person is innocent, how do we make it up to that person?
  + Use terminology found in Title IX as much as possible for consistency.

Policy 165

* Overall (Comment 4)
  + After the investigation, but before administrative sanctions, the situation and investigative findings should be reviewed by a committee, which includes a peer (i.e., UVUSA, staff, or faculty) of both the respondent and complainant. This review should occur before the issuance of a determination.
  + Recommend the committee connect with the Office of Diversity and Inclusion or another subject-matter expert.
  + Add language “Prior to the investigation, get feedback from the survivor about how they would like the school/college to respond.”
* Overall (Comment 8)
  + Want to make sure that if someone is retaliating, something should be included.
* Section 5.6 (Comments 1,2,3)
  + Support individuals should be allow for all faculty, staff, and students during the entire process including fact finding for all parties.
  + Train the support person prior to any involvement and adhere to all rules.
  + Discussion about the selection of standard between “clear and convincing standard” and “preponderance of evidence.” Policy could be amended to clear and convincing standard.
* Section 5.11 (Comment 7)
  + Once a faculty panel is established for a hearing, the entire process should no longer be under the oversight of Human Resources, but under faculty. It holds true for staff.
  + Discussion about having faculty, staff, and students trained to assist Title IX Office and have equal authority in the process.
* **MOTION** – Suzy Cox moved to extend the discussion to 5:10 p.m. Sandie Waters seconded. All in favor? 13; 7 – Opposed. Motion passed.

Policy 168

* Ran out of time for discussion and did not have a quorum to vote on extending. Will send two emails to faculty on 1) Policy 168 and voting on the Title IX bundle and 2) bylaws.

Meeting adjourned at 5:14 pm

Voting Results for Title IX Bundle (Policies 162/165/168), which closed on 4/28/21

* Overall Title IX Bundle Comments – All in favor? 29; 0 – Opposed; 2 – Abstained. Vote passed.
* Policy 162 Overall - All in favor? 30; 0 – Opposed; 1 – Abstained. Vote passed.
* Section 3.1 – All in favor? 29; 1 – Opposed; 1 – Abstained. Vote passed.
* Section 3.17 – All in favor? 27; 0 – Opposed; 4 – Abstained. Vote passed.
* Section 4.3.4 – All in favor? 30; 0 – Opposed; 1 – Abstained. Vote passed.
* Section 4.7.2 – All in favor? 27; 2 – Opposed; 2 – Abstained. Vote passed.
* Section 4.8.2 – All in favor? 30; 0 – Opposed; 1 – Abstained. Vote passed.
* Section 4.9.2 – All in favor? 30; 0 – Opposed; 1 – Abstained. Vote passed.
* Section 4.9.3 – All in favor? 26; 3 – Opposed; 2 – Abstained. Vote passed.
* Section 4.10.1 – All in favor? 30; 0 – Opposed; 1 – Abstained. Vote passed.
* Section 4.11.2 – All in favor? 28; 1 – Opposed; 2 – Abstained. Vote passed.
* Section 5.3.3.2 – All in favor? 30; 0 – Opposed; 1 – Abstained. Vote passed.
* Section 5.4.7.1 – All in favor? 30; 0 – Opposed; 1 – Abstained. Vote passed.
* Section 5.4.7.1 – All in favor? 29; 0 – Opposed; 2 – Abstained. Vote passed.
* Section 5.4.8.1 – All in favor? 29; 0 – Opposed; 2 – Abstained. Vote passed.
* Section 5.4.8.4 – All in favor? 29; 0 – Opposed; 2 – Abstained. Vote passed.
* Section 5.6.8 – All in favor? 29; 0 – Opposed; 2 – Abstained. Vote passed.
* Section 5.6.11 – All in favor? 28; 0 – Opposed; 3 – Abstained. Vote passed.
* Section 5.7.2(5) – All in favor? 30; 0 – Opposed; 1 – Abstained. Vote passed.
* Section 5.8.2 – All in favor? 30; 0 – Opposed; 1 – Abstained. Vote passed.
* Section 5.8.2.3 – All in favor? 31 – 0 – Opposed; 0 – Abstained. Vote passed.
* Sections 5.8.3.3/5.8.5.2 - All in favor? 29; 0 – Opposed; 2 – Abstained. Vote passed.
* Section 5.8.3.4 – All in favor? 30; 0 – Opposed; 1 – Abstained. Vote passed.
* Section 5.8.4.2.1 – All in favor? 29; 1 – Opposed; 1 – Abstained. Vote passed.
* Section 5.8.5.3 – All in favor? 30; 0 – Opposed; 1 – Abstained. Vote passed.
* Section 5.8.5.5 – All in favor? 31 – 0 – Opposed; 0 – Abstained. Vote passed.
* Section 5.8.6.1 – All in favor? 29; 2 – Opposed; 0 – Abstained. Vote passed.
* Section 5.9 – All in favor? 30; 0 – Opposed; 1 – Abstained. Vote passed.
* Section 5.9.4 – All in favor? 30; 0 – Opposed; 1 – Abstained. Vote passed.
* Section 5.9.8 – All in favor? 30; 0 – Opposed; 1 – Abstained. Vote passed.
* Section 5.9.9 – All in favor? 29; 0 – Opposed; 2 – Abstained. Vote passed.
* Policy 165 Overall – All in favor? 21; 1 – Opposed; 8 – Abstained. Vote passed.
* Overall (1) - All in favor? 27; 2 – Opposed; 1 – Abstained. Vote passed.
* Overall (2) - All in favor? 28, 1 – Opposed; 1 – Abstained. Vote passed.
* Overall (3) - All in favor? 28, 0 – Opposed; 2 – Abstained. Vote passed.
* Section 5.6 – All in favor? 29; 0 – Opposed; 1 – Abstained. Vote passed.
* Section 5.11 – All in favor? 28; 0 – Opposed; 2 – Abstained. Vote passed.
* Sections 5.11.4/5.11.4.1 – All in favor? 27; 0 – Opposed; 3 – Abstained. Vote passed.
* Section 5.11.4.2 – All in favor? 28; 0 – Opposed; 2 – Abstained. Vote passed.
* Section 3.11 – All in favor? 25; 2 – Opposed; 4 – Abstained. Vote passed.
* Section 4.2.1 – All in favor? 28; 0 – Opposed; 3 – Abstained. Vote passed.
* Section 4.3 – All in favor? 29; 0 – Opposed; 2 – Abstained. Vote passed.
* Section 4.3.1.2 – All in favor? 29; 0 – Opposed; 2 – Abstained. Vote passed.
* Section 4.3.2 – All in favor? 29; 0 – Opposed; 2 – Abstained. Vote passed.
* Section 5.1.1 – All in favor? 28; 0 – Opposed; 2 – Abstained. Vote passed.
* Section 5.2.1 – All in favor? 30; 0 – Opposed; 1 – Abstained. Vote passed.
* Sections 5.2.1.1/5.2.1.3 – All in favor? 29; 0 – Opposed; 2 – Abstained. Vote passed.
* Section 5.2.1.4 – All in favor? 29; 0 – Opposed; 2 – Abstained. Vote passed.
* Section 5.2.1.5 – All in favor? 30; 0 – Opposed; 1 – Abstained. Vote passed.
* Policy 168 Overall and send forward comments made with no debate – All in favor? 28; 0 – Opposed; 2 – Abstained. Vote passed.