

**SUMMARY MINUTES**  
Regular Meeting #1762  
UNI Faculty Senate  
January 26, 2015  
Oak Room, Maucker Union  
3:30- 5:07 p.m.

**Call to order** 3:30 p.m.

**Courtesy Announcements**

1. Press Identification: Christinia **Crippes**, *Waterloo Courier*
  
2. Comments from Interim Provost **Licari** (delivered by Interim Associate Provost April **Chatham-Carpenter**)  
“In speaking with Senate Chair Tim **Kidd** and with LAC Director Deedee **Heistad**, I learned that there is some confusion over what Deedee presented to the Senate last meeting, and what the Senate actually voted on. As I understand it, there was no change to the UNI curriculum as a result of the vote last meeting. The LAC Committee did what it was asked to do: to come up with a liberal arts framework for the BAS degree that could be used by departments as a guide as they develop curriculum. There was (and is) no attempt to circumvent consultation; indeed, Deedee is hoping to engage in a wider discussion on this. Any new proposal for the BAS LAC will go through the regular curriculum review process - to the LACC, College Senates, UCC, and Faculty Senate.”
  
3. Comments from Faculty Chair **Peters**:  
Chair **Peters** sought volunteers for two committees: the Regents Awards for Faculty Excellence Committee, and for the Facilities Master Plan Task Force. A discussion flowed from information he shared about a current Iowa House of Representatives study bill, (H-59) which would allow high school students to take courses that would transfer directly to Regents Universities.
  
4. Comments from Senate Chair **Kidd** – none

**Minutes for Approval**

Jan. 12<sup>th</sup>, 2015 Approved **Hakes/Strauss**

(vote corrected on BAS Degree Structure: to 9 for; 5 against; 3 abstentions)

**Consideration of Calendar Items for Docketing**

1269 Proposed Changes to Transfer Credit

<http://www.uni.edu/senate/current-year/current-and-pending-business/proposed-changes-policy-transfer-credit>

**McNeal/Walter**

All Aye docketed in regular order

## **New Business**

**Note:** 2/9 Meeting will be canceled because of timing: Provost candidates open forum  
Chair Kidd will finalize list names of those representing faculty at forum.

### **Comments from United Faculty President Joe Gorton:**

UF President Gorton's remarks centered on the Discrimination, Harassment and Sexual Misconduct Policy 13.02, as it relates to the provision regarding mandatory faculty reporting on other faculty, and the possible "chilling" effects that policy could have on reporting. UF has filed a Prohibitive Practice Complaint with the Iowa Board of Public Relations. **Gorton** added that United Faculty is committed to resolving this issue.

### **Consideration of Docketed Items**

**1265/1160** Consultative Session on new Discrimination, Harassment and Sexual Misconduct Policy 13.02 (Discussion to be continued)  
<http://www.uni.edu/senate/current-year/current-and-pending-business/consultative-session-new-discrimination-harassment-and-sex>

### **Motion to Extend Session by 10 minutes**

**Zeitz/O'Kane**

### **Motion to Adjourn 5:07 Hakes/ Zeitz**

**Follows is Transcript of 40 pages, with no Addenda.**

**A Power Point presentation was attached:**

***"Title IX Reporting Requirements"* submitted by Leah Gutknecht and Leslie Williams (13 slides)**

### **Next Meeting:**

February 23, 2015

Ballroom C

Maucker Union

3:30 p.m.

## **FULL TRANSCRIPT**

Regular Meeting #1762  
UNI Faculty Senate  
January 26, 2015  
Oak Room, Maucker Union  
3:30-5:07 p.m.

**Present:** Senators Jennifer **Cooley**, Barbara **Cutter**, Cyndi **Dunn**, David **Hakes**, Melissa **Heston**, Chair Tim **Kidd**, Jerilyn Marshall, Ramona **McNeal**, Vice Chair Lauren **Nelson**, Steve **O’Kane**, Marilyn **Shaw**, Gerald **Smith**, Mitchell **Strauss**, Jesse **Swan**, Secretary Laura **Terlip**, Michael **Walter**, Leigh **Zeitz**; Faculty Chair Scott **Peters**, Interim Associate Provost April **Chatham-Carpenter**, Associate Provost Nancy **Cobb**, Northern Iowa Student Vice President Paul **Andersen**.

**Not Present:** Karen **Breitbach**, Forrest **Dolgener**, Todd **Evans**, Randall **Harlow**, Gary **Shontz**.

**Guests:** Sam Bass, Harry Brod, Jeffery Byrd, Emily Gardner, Joe Gorton, Leah Gutknecht, Joellen Hatchett, Wendy Hoofnagle, Taylor Huinker, Heather Jeronimo, Catherine MacGillivray, Leslie Williams.

### **3:30 Call to order Courtesy Announcements**

1. Press Identification: Christinia **Crippes**, *Waterloo Courier*

2. Comments from Interim Provost **Licari** (delivered by Interim Associate Provost April **Chatham-Carpenter**) Mike wanted me to read this paragraph for him in relationship to the last Senate meeting. So this is him, imagine that.

“In speaking with Senate Chair Tim Kidd and with LAC Director Deedee Heistad, I learned that there is some confusion over what Deedee presented to the Senate last meeting, and what the Senate actually voted on. As I understand it, there was no change to the UNI curriculum as a result of the vote last meeting. The LAC Committee did what it was asked to do: to come up with a liberal arts framework for the BAS degree that could be used by departments as a guide as they develop curriculum. There was (and is) no attempt to circumvent consultation; indeed, Deedee is hoping to engage in a wider discussion on this. Any new proposal for the BAS LAC will go through the regular curriculum review process - to the LACC, College Senates, UCC and Faculty Senate.”

**Chatham-Carpenter:** And I've got a copy of this if you would like to have that, if that's easier for you.

**Kidd:** Thank you.

### 3. Comments from Faculty Chair **Peters:**

Thanks, first, Chair **Kidd** allowed me to mention that we need some volunteers and he's been kind enough to add it to things that we could possibly consider during New Business. You'll have a few minutes to mull this over and think about whether you want to volunteer. We need, first of all, a volunteer from the Senate to be on the Awards Committee. That's a committee that looks at the Regents Awards for Faculty Excellence. So that's one thing. Secondly, Vice-Chair **Nelson**, unfortunately due to some miscommunication and errors that I made in scheduling, she had to drop off of the task force that I'm chairing. It's the Facilities Master Plan Task Force. You might recall that maybe shortly before Christmas we had a lively discussion on email about Master Planning and how facilities tie in to all of that. Lauren was the Senate's representative on that committee and unfortunately our regular meeting time, which is Thursday at 9:30; every other Thursday at 9:30, Lauren is teaching during that time and she cannot make it so the Senate would be well served to have another representative on the task force. So, you have a few minutes to think about it. Don't all raise your hands at once; think it over very carefully.

I have one substantive thing though that I want to draw the Senate's attention to.

There's a bill in the Iowa House: House Study Bill 59 (H-59) concerning joint enrollment programs. These are programs where currently you're all probably familiar that students in high school can take classes in their high school that qualify to get community college credit, and this bill would expand that program to include the Regents universities. So, my immediate reaction, when I first heard about it, I'll admit was pretty skeptical. I didn't like the idea of high school teachers teaching classes, students getting credit for taking those classes, but there may be some positive things to it. First of all, if the high schools that were participating in this, their teachers would have to be hired by us as

adjuncts to teach the courses, which would give our academic departments oversight over them and over what they teach and how they teach it. It could, if schools were to take part in this, it could possibly give us more control over what's taught in those classes and how students earn credit for those classes than happens currently when it goes to community colleges. And, I suppose it could help us to develop ties with high schools as well. So, there may some positives to it. I wanted to call the Senate's attention to it at least and we'll keep tracking it. Obviously if it passes the administration and the faculty will have a lot of work to do in terms of making sure that there are proper oversights over that program.

**Strauss:** These are not AP classes we're talking about?

**Peters:** I don't know if they're necessarily AP courses. They could be AP classes but it's...if... these are classes that go through a separate process to qualify for joint enrollment.

**O'Kane:** Scott, does it look like this is a partisan issue?

**Peters:** I don't know if it's partisan. I did forget to mention some key pieces of information though. The Regents have come out in favor of it, and the three university presidents have come out in favor of it. Okay? I don't know how it stacks up in terms of partisanship. I just don't know that much about it yet. Honestly, I didn't write down who introduced it. So I don't even have that information at my fingertips, but I can find out.

**Strauss:** My son, Parker just got invited to be in an AP class and he had to have several recommendations. It was quite a number of hoops he had to go through, and so one feels confident that there is a select number of students who qualify to do this. But this sounds like something different. This sounds like a free-for-all.

**Peters:** I don't know that it's fair to call it a free-for-all because there is a process by which...I think usually the institution has to approve a course, as a joint enrollment course. But I guess what I would say is that anecdotally, my own experience is that when I talk to students who have taken say...have gotten community college credit for an American National Government course, an American Politics course, it doesn't seem to

me, frequently, that they have learned the same amount of stuff that they would have learned in that same course here on campus.

**Heston:** I just wanted to note that schools will probably be highly in favor of this because they get \$250 per student per course, so their coffers are augmented with this. When we say “dual enrollment” what we mean is that course counts both for high school credit and for college credit. And so, I guess I always wonder why we just don’t end high school at 16 and let them go to college. And I think it fits very neatly with, if you heard the Governor’s State of the State message; his goal that the Regent’s Institutions create \$10,000 bachelors degrees at which the total tuition for a 4-year degree would be \$10,000, and if you do the math, that’s \$250 per course, for a 120-hour degree program.

**Peters:** I know at this point, I routinely advise students who come in with 30 hours of credit through these types of programs, and I’ve run across students...in fact last year I ran across a student who entered straight out of high school as a college junior.

**Hakes:** You said that the high schools are in favor, that they get \$250...

**Heston:** Per student.

**Hakes:** Per credit hour or per student?

**Heston:** Per student.

**Hakes:** What do we get? Clearly if all...

**Heston:** Nothing.

**Hakes:** Right now, the community colleges get money for having-- for want of a better term-- laundered the high school credits through the community college. So they get something, I assume there’s something that we’re gaining something from this.

**Heston:** I think it’s like an articulation agreement. I think that’s how it will work: exactly like an articulation agreement.

**Peters:** I’ll try to look into that and I can report back.

**Strauss:** I can speak from the other side here, as a parent who’s run multiple children through college and have some children who are carrying some serious debt burden,

and I have another one coming up. If Parker can earn significant course credit towards his college, that's a sweet deal.

**Andersen:** I was just going to make a comment about the credits I took in high school. Generally they set in high school, they had a pre-requisite like a G.P.A. requirement to take the course as well as a course you may have taken prior to it. Just to give you some context on this, I came in with 36 credits when I came here from high school, but that was because my high school did a very good job with community colleges around us. Not every high school can do this. We did have like pre-reqs to take the actual course.

**Gorton:** Paul, do you think that served as a good recruiting tool for U.N.I.? Was that a good draw?

**Andersen:** I don't know if that's necessarily what drew me. I think most of the classes that I took would have transferred wherever I went. But that was pretty significant for me. That took a significant chunk off of my time in the LAC area here coming in. I know that I took two of my communities through that, which going in and looking at what my requirements were going to take, I jumped into major courses I think my first semester of my sophomore year. I liked that fact when I sat down with Advising when I did come, that I could do that.

**Terlip:** Just as a parent, this is when the Lab School was still going, I had children who did dual enrollment but they came here. So I think there are other people, when people are close by, there may be ways for regular U.N.I. faculty also or adjuncts to teach those rather than assuming it's always going to be high school teachers. It was marvelous for them.

**Smith:** I'll speak as a parent of two children who've now finished graduate school, who went to the Lab School and aspired to take college credit while they were in high school and my spouse and I shared with them our viewpoint and it goes something like this: Under all things in life there is a season; A time to be born and a time to die. There's a time to plant and a time to harvest, and there's a time to be a high school student and participate in all the things high school students do and learn and benefit, and there's a

time to be a college student, and participate in that and when you try to mix the two, I think confusion is resulting.

**Kidd:** Thank you for the discussion, Scott. I'll keep my comments to...I think we've had enough comments. But we'll start with the Minutes from January 12.

**Swan:** I've asked you about this before and so I wanted to ask again here. If attendance in the minutes is correct, then the representation of the voting in **1259/1154** can't be correct, and I wanted that to be resolved before today, but I see that it hasn't been.

**Kidd:** What's not correct exactly?

**Swan:** The numbers aren't correct. If there are 19 people in attendance, you have to have 19 people accounted for in the voting, and only 15 are accounted for.

**Nelson:** I know that I abstained. Were abstentions recorded?

**Kidd:** One abstention was recorded.

**Swan:** The disposition of the voting can't be accurate if ... I don't know that the attendance is accurate. I'd wanted that resolved before today.

**Terlip:** Does the attendance include non-voting members though, because we do have some non-voting members?

**Swan:** I did not count the non-voting members in the 19. I counted 19 voting members.

**Andersen:** I believe a couple of senators did leave at a certain point throughout the meeting.

**McNeal:** I believe there was more than one abstention; there were several abstentions.

**Heston:** There were at least two because I know that Mitch (**Strauss**) abstained. I don't mean to speak for you exactly, but I will.

**Swan:** The Chair is always abstaining, unless he votes, so that sounds like there would be at least three abstentions. Again, I don't know, I think it should be resolved: attendance in relation to the voting.

**Kidd:** Sure. What do you recommend?

**Swan:** We should resolve this, and pass the minutes, next time once it's resolved.

**Kidd:** How do you propose to resolve it?



**Swan:** To work it out with the record. We'll seek and find and decide then what it has to be.

**Kidd:** That would presume that the abstention would be everyone who was here but not voting.

**Swan:** I think we can work it out fully and then just pass the minutes next time once we do have a good sense of it. So we could just move on with New Business today.

**Terlip:** I was not here last time, Influenza 2015 was at my house and none of you want that, but anyway, my understanding from reading the minutes is that there was a lot of discussion and we have some follow-up stuff. If we don't approve the minutes, then they don't go out and I don't know if that will help or hinder future discussion, so I mean I think that is something to consider, because we can always revisit the minutes with another vote to correct them later.

**Strauss:** Sounds like a good solution.

**Kidd:** So, I guess I'll just ask for a motion to pass the minutes. If there's no motion, then I guess we won't.

**Hakes:** I'll move.

**Strauss:** I'll second it.

**Kidd:** Motion by Senator **Hakes**, second by Senator **Strauss**.

**Strauss:** If somebody wants to correct it later, they can.

**Kidd:** All in favor of passing the minutes from Jan. 12? Any opposed? Shall I count the abstentions?

**Terlip:** I'm abstaining because I wasn't here.

**Kidd:** So it seems we have several 'yes'.

**Swan:** It's a voice vote, so you just decide what you thought you heard.

**Kidd:** I heard in favor. The minutes are passed and I'm sure we'll be revisiting this issue again.

**Swan:** How sure?

**Kidd:** I'm very sure. So the first thing is a consideration of an item for docketing. The proposal changes how transfer credit is assigned to the university. Do I have a motion to

add this to the calendar? Moved by Senator **McNeal**. Second by Senator **Walter**. All in favor? Any opposed? Okay. Motion will move to the calendar and be docketed. Under New Business, right now we have that the regularly scheduled meeting on February 9 meeting is cancelled because we have the Open Forum of the Provost Candidate, and you've got to get out of here, so I think we need to hear from you. UF President Joe **Gorton** wanted to speak a little before we have our consultative session. He's got to leave by 4:00 and it's at least 3:50. Would it be okay to present...to ask the Senate's indulgence...to have Joe **Gorton** to speak before he has to go away.

UF Faculty President Joe **Gorton**: Thank you Faculty Senate Chair **Kidd**. I'm not surprised at the indulgence because one of the things I want to say real quickly is that during my time, especially during the last year as president of the faculty, we've had as what I would regard as almost unprecedented amount of cooperation between United Faculty and this body, and speaking on behalf of the faculty union, we really do appreciate it. Especially Faculty Senate Chair **Kidd** and Faculty Chair **Peters**, we have worked so very closely together. You know, you (refers to **Peters**) sent a copy of the email to me on the legislation you just discussed. We've worked together on discussions of performance-based funding. It just makes for such a, I think, a healthier environment for the university when we can have this kind of collaboration between our bodies, and I really hope it will continue and I have every expectation that it will.

Just to take a few moments of your time, I know you're going to be discussing the Sexual Misconduct policy. I just want to say a little bit about United Faculty's history related to that. The Sexual Misconduct policy...First of all, let me say this. This is really important. As an affiliate of the American Association of University Professors, United Faculty wants to do everything we can to discourage, prevent and respond aggressively to the problem of sexual harassment or sexual misconduct. It's very, very important part of what AAUP stands for. We are committed to that. We are also committed to due process for the faculty, and so when this policy first came to our attention through the training videos that were distributed out to the faculty, we had real concerns, and the primary concern is that the faculty right now-- the policy right now requires mandatory

requirement of faculty to report possible concerns they have about other faculty who may have violated the sexual misconduct policy. So what that would mean would be that, if I told Barbara, if I told Senator **Cutter** that I was concerned that I was concerned that I was being sexually harassed, that she would be required to make that report to the administration about that claim, which I might not want her to do. Okay? So, United Faculty has two really important concerns here. One is that this policy can definitely have a chilling effect upon the willingness of people to report sexual harassment, sexual misconduct, and we're very concerned about that. Number two, and in this area, I should inform you that we have filed a Prohibited Practices Complaint with the Iowa Board of Public Relations. I think it was back, I want to say, in September or October, I can't recall now. We filed a Prohibited Practices Complaint once we learned of this policy, because in our view it violates an element of an Iowa law that prohibits the employer from interfering with any concerted activities on the part of employees. So, employees in the public sector have the right, under state law, to discuss workplace issues, and our view is workplace issues include issues of sexual misconduct. This policy would run against that law, so we filed a Prohibited Practices Complaint. Now, along the way, Senator **Cutter** is also Vice President of the union, we met with President **Ruud** to discuss the Prohibited Practices complaint. We would rather not file such complaints, we would rather resolve matters without those kinds of disputes, and told him that we would be quite willing to withdraw that Prohibited Practices Complaint if the policy were changed. What we've been told since then, and Senator **Cutter** will correct any errors here, I don't think there are any, but if there are, what we were told then was that that Equity and Compliance Office, Leah **Gutknecht's** Office, had been tasked with creating a committee that would revisit this policy, and that in revisiting the policy, the goal would be to remove this onerous part of the policy that it is a mandatory requirement for faculty to report on another faculty. That discussion with President **Ruud**, I believe took place back in early November I want to say. To date, I don't know, I can't report to you what the status on that committee is. It's our understanding that once the committee is formed, the United Faculty will have representation, and I think

our vice president has recommended people to serve on that committee, but I just don't know what the status of it is right now. I guess just to say that United Faculty is very committed to resolving this policy issue and that we look forward to working with the Senate in any way that we can to do that. I'd like to ask Senator/(UF) Vice President **Cutter** if she has anything she'd like to add. By the way, I wasn't going to be here today, but through her superhuman efforts, Barbara managed to make it from Massachusetts this morning from a historic snowstorm/blizzard and get here. How you've done this is a miracle, but here you are.

**Cutter:** Thank you, But I have to say that I've been up since 3:30 this morning, so I'm not sure what's going to come out of my mouth when I speak. Thank you, thank you UF President **Gorton**. I guess I just want to add that United Faculty only has purview over faculty-faculty relations, and this is a very broad policy. It deals with **all** U.N.I. employees reporting. So that would be U.N.I. employees reporting vis-a-vis other U.N.I. employees, or U.N.I. employees and students, and UF can't deal with the student-employee part of this policy. It's not that the Senate would have to be limited to that part of it, it's just that UF could only take up the other part, insofar as it related to faculty-faculty interactions. But there's a lot of, from my perspective, there's a lot in common, because as Joe mentioned, his example is a really telling one. If you've got some, say, members of a department or some other group, and they all feel like they're being harassed, but they're not sure if it rises to something they could report as sexual harassment, if they can't talk to each other about it, that chills the environment; that makes it less likely for these things to ever be reported. If they think, "If I even bring this up, that I feel like I'm being harassed, and is this inappropriate behavior? And I'm worried because I'm not tenured but the person harassing me is, am I going to get myself into a bad position if I decide to report?" You can't have those kinds of conversations and try to figure these things out, and I think, and a lot of people think, that the result will be less reporting and that's very, very disturbing to me and...because I take these issues so seriously and it's important to have a climate where they can be reported. The other thing, this is a Senate issue, and the very end of last year, those of you who were in the Senate last

year, Jerry **Smith** sent us a email after our last Senate meeting, and he said that he had been at the Cabinet meeting where the new Policy on Sexual Harassment, Discrimination and Misconduct--the draft policy--was brought up, and in his email of May 12<sup>th</sup> he said that he suggested that it might be good to have the Faculty Senate review this proposal. "A number of changes are going to be made to the policy, and I was assured that any implementation would allow for faculty review and proposed revisions in the fall." So he suggested to Senators that they look at, express any concerns. A few did on email, but I think everybody sort of forgot about that over the summer and it never got vetted by the Senate, even though Senators did request that. So that's why I submitted the petition to bring this up now because I went through my old emails and realized that, oh--we had asked to see it, but I forgot that we never had. That's the background to how it came--what the Senate's done with this, or not done with this so far.

**Kidd:** Thank you. I don't want to have too much discussion of this now, because I want Leah (**Gutknecht**) and Leslie (**Williams**) to come for this.

**Gorton:** I have to roll out of here. Thank you so much. I appreciate it. Thank everyone for your indulgence.

**Kidd:** Before we sink back into that topic, we do have one thing that we should probably maybe discuss, or it's an idea, it's the Faculty Reps for the Board of Regents meeting. So at the Board of Regents meeting, a group of faculty are invited to meet with the Board of Regents members. In this case it will be on February 4<sup>th</sup>, 5-6 pm, since the Board of Regents meeting is meeting being held here. Does anyone have any ideas for what group of faculty might be appropriate?

**Heston:** What do you want to accomplish?

**Kidd:** I'm asking you.

**Heston:** What do we want to accomplish?

**Swan:** Is it just a social thing? It sounds to me like a social thing. So some social people maybe? *(laughter)*

**Peters:** Just a little bit of background: I think, at least I've been told that years ago, the Regents used to have a lunch or dinner or something with faculty members routinely as part of the Board of Regents meetings, and then, I think possibly for multiple reasons, but one reason is they compressed the Board of Regents meetings schedules--they used to be two full days—they squeeze it into a day and a half at most if they can. That was one thing that went away and when we found ourselves a few years ago in the troubles we found ourselves in, and we had no communication whatsoever with the Regents. We literally, at one point Chair, then Senate Chair **Funderburk**, heard someone behind him talking to reporters, and he was talking about the letter that the Senate had sent to the Board protesting the program cuts, and Jeff (**Funderburk**) had no clue who this guy was. He was Executive Director of the Board of Regents; he had never met him. He had no idea who he was. That's how cut off the faculty was from the Board at that time. So we started pushing for more regular interaction between faculty and Board members just to try to re-establish some of those ties and have the opportunity for faculty members to talk to members of the Board about anything frankly. So just as a sort of background, the fact that they have reached out and are starting to do this this year, I think, is a positive thing and that they're building it back in is a positive thing, and I encourage us just for us to take advantage of it.

**Dunn:** I'll throw out two ideas, since nobody seems to have any. One is, we could think of it building on what Chair Peters said, as an opportunity for some faculty leaders to talk to the Board, in which case you two, (refers to **Peters** and **Kidd**) you and maybe some of the Chairs of the Faculty Senates and one or two people from here would be a possibility. The second option, if they don't already meet them in some other venue, how about the people who get the Regents Award? It would be nice if the Regents go to meet the people who give these awards to.

**Cobb:** They do. They are. They're selected in the spring and they actually are honored big time at the Board of Regents meeting in the fall.

**Dunn:** Good. I'm glad to hear it. In that case, the leadership of departments.

**Kidd:** I do get to meet with them, so I'm not sure.

**Nelson:** Broadening it to include the Chairs of the College Senates, even like the Teacher Education Senate, and Graduate Council, because then you could be there then as a familiar face, but you could bring in some others.

**Heston:** What about if we're going to go with awards, the people who won the three big awards university-wide awards for service, scholarship and teaching as three of the people?

**Kidd:** I think four or five is the upper limit. I don't know if we could have that many. But these are both good ideas. I'm not sure if we'd like to vote, or...

**Nelson:** Why don't you identify who the awards winners are, and who the Chairs are of the College Senates are...

**Kidd:** I know who they are.

**Nelson:** ...and then we could gauge the interest.

**Kidd:** Sure.

**Dunn:** I don't know if you need a motion, but could we sort of ask you to go down that list of award winners and go through the colleges until you get five people?

**Kidd:** Sounds good. Okay.

**Smith:** The order that you're proceeding is excellent. If you have a challenge in having adequate representation regardless of the fact that you meet with them in other contexts Tim, I would like for you and Scott (**Peters**) and Joe **Gorton**, president of United Faculty be three that have that opportunity.

**Swan:** That's a very good idea.

**Heston:** The relationship between United Faculty and the Board of Regents might...especially during bargaining...I don't know whether having the president of the Union there is kosher. I mean I don't know.

**Strauss:** Vice president?

**Cutter:** If he's a faculty member, I'm not sure why it matters.

**Strauss:** Especially if it's social.

**Nelson:** I don't know if I'd make the Union President the priority, but I think it's a consideration, but we might already have more enough persons if we start with

award winners and College Senate Chairs add in the Graduate Council and Teacher Education and that's a lot of folks.

**Kidd:** Thank you. I'll go down the list and hopefully I'll have some names by the end of the week. It's already past four o'clock. April, I'm sorry, we should start with the Consultative Session. I'm sure we'll be seeing lots of BAS stuff.

**Nelson:** There are people milling in the hallway, are we sure that they're not...Leah (**Gutknecht**) I know is out there. Leslie is out there. Why don't we invite them to come to the front?

**Kidd:** Yes. I want them to be able to speak to us. They're hiding.

**Cutter:** And we have some guests from Women's & Gender Studies here. Can they talk?

**Kidd:** Absolutely. I thought we'd start with maybe a 15-minute presentation from Leah (**Gutknecht**) and Leslie (**Williams**) to get things started on this, to get their point of view and then we could have discussion, and yes, everyone is free to speak as far as I'm concerned.

**Nelson:** The usual protocol is to let Senators speak.

**Kidd:** You've got a presentation? Let me load this thing up. Here's the Policy and let me get your presentation. Got it. Do you mind if I copy this for our secretary to put in the minutes?

**Gutknecht:** Sure.

**Kidd:** I will be in charge of flipping through slides.

**Gutknecht:** At five for us? Thanks for having us. Are you ready for us to jump in?

**Kidd:** Yes. Please turn the light off. Keep it brief because I think there will be a lot of discussion on this.

**Gutknecht:** Feel free to jump in with questions as we're going through this too. We're not opposed to that at all. Keep it as informal as you would like. And maybe the first thing to do after we've read your comments that you shared with us, Tim, is sort of an explanation, I don't know if explanation is the right word for it, but how we got to this point, and I think there's maybe some confusion among all of us about how we got to the point of the actual Policy being in place. Because if I understood your comments



correctly, some people maybe thought that the policy was not going to be approved or moved forward without additional conversation. That wasn't my understanding and that's not what happened. The process, and I'm not in charge of the process, the process continued in terms of the approval process for the policy. My understanding, and how others moved it forward was also with the understanding that we would get the policy on the books, and then continue conversation and if we find through conversation we need to go back and make any adjustments comments that we would and that we'd be very open to that. We've already found things in the policy that we know need to be adjusted or tweaked along the way, as with any new policy. That was my understanding as well as Leslie's (**Williams**) and general counsel and so we're not dismissing at all that there's been some kind of misunderstanding or miscommunication. I don't know exactly where that took place, but the policy did move forward through the approval process, and got approved as it is. So, we can continue conversation, but I apologize that there was that misunderstanding along the way. Does that make sense with what you understood, Tim?

**Kidd:** I'm not sure. Provost **Licari** told me that it was not fully approved, so I think there's some confusion throughout.

**Gutknecht:** He said it's not fully approved now?

**Kidd:** He said it was approved but pulled back for further review, as it was approved on a temporary basis. Policies are approved in the summer on a temporary basis until they have been fully vetted, so that's what I thought.

**Gutknecht:** The confusion continues then.

**Williams:** The confusion continues. We're operating under this one, and I've been dealing with students under this one.

**Kidd:** These temporary policies, from what I understand, with temporary approval: you operate under the policy as is mentioned, but it's supposed to be further vetted.

**Gutknecht:** Okay.

**Kidd:** So you're supposed to operate under this policy. That would be correct.

**Gutknecht:** Okay. Then this is part of the vetting process?

**Kidd:** No. This is not part of the vetting process.

**Gutknecht:** We need to put it back through the full vetting?

**Kidd:** Someone else is supposed to. I don't think you're supposed to resubmit it. I believe it's supposed to be coming from the Cabinet.

**Gutknecht:** Alright, well thank you for that. We will follow up.

**Kidd:** I don't know all of these details of course; I'm not great on procedure.

**Gutknecht:** I don't either. Okay. Well, now that we've discussed the mass confusion, amongst all of us, we'll dig down into the actual language here. How we approached this for conversation purposes today is to have a quick overview of the Title IX language that seems to be in question, and then look at a little bit about what reporting looks like on our campus, because I think there might be some misunderstanding about what it means to make a report, and then why is it important. I think that's probably the most important thing for us to talk about, is why reporting is important. So if you go to the next slide please, thank you. This is a lot on one slide, but that is the actual language that's in the policy right now that "all University employees who are aware of, or witness discrimination, harassment, sexual misconduct or retaliation are required to promptly report to a Title IX Officer or Deputy Coordinator." I won't read all the rest of that to you. This does include students when they're in their employment role, not all students, but students when they're in their employment role.

**Heston:** To clarify, this would mean that if our work-study students saw something, they would be under this policy, to report their professors as harassing the secretary or harassing who ever?

**Gutknecht:** If the information came to them in their role as an employee. The easiest example is as an R.A. That's when it will happen most often. If we can move to the next slide "What prompted these changes?" We took the old Discrimination and Harassment Policy and the old Student Sexual Misconduct Policy and merged those two into one policy. That is considered the best practice amongst colleges and universities at this point, and so in doing that, we had some definitions we had to add, including a definition of a "responsible employee" as part of the provisions of Title IX guidance at

this point. So when we look at what the guidelines tell us are responsible employees, are anyone and it has three prongs here: it has the authority to take action to redress sexual violence, who has been given the duty to report, or who a student could reasonably believe that has this authority or responsibility. That's really the key element of that particular phrasing. From a student perspective, when they are sharing with someone on campus more times than not, they believe that the person they're sharing that with has some authority or responsibility to take some action. Also we have case examples of where the faculty have been instrumental in bringing cases forward and by doing that have helped those students immensely in being able to bring things forward and get them the resources and options that they need. So if we go to the next slide...

**O'Kane:** What if the student talking to me in my office does **not** want me to carry it forward?

**Gutknecht:** We have a slide on that. I can take the time and go through that now or...

**O'Kane:** As long as you're going to cover this, that's fine.

**Gutknecht:** We will definitely cover it. Good question. One of the requirements of Title IX is once we, the school as a whole, or reasonably should have known, that there was harassment that creates a hostile environment, we are required to take immediate action, and we have to take steps to eliminate the harassment. We have to prevent it's recurrence; we have to address it's effects. Those are the three hallmarks. The next slide talks about how we start into that in terms of we have to do an investigation that's thorough, reliable and impartial. We have to have a process that's prompt, effective and equitable, and then we have to have remedies that make sure that it actually ends the discrimination. We have to make sure that we've prevented the recurrence and then we also have to remedy the effects upon not only on the victim, but the community, too. Because sometimes the victim is not the only person impacted by the situation.

**Terlip:** When you're saying harassment, is that a broader definition than just sexual harassment then, or are you only referring to sexual harassment in this policy?

**Gutknecht:** The policy has a whole set of definitions that are provided to us. Let me get the list here. We've got discrimination, harassment, sexual harassment, sexual misconduct...

**Terlip:** I understand, but I'm just asking for this. Is this referring to all harassment or is this particular part you're talking about, the previous slide, only referring to sexual harassment?

**Heston:** Racial harassment?

**Williams:** Related to the policy. If we're looking at our policy it's for anything. If you're looking at how this relates to Title IX and why we included it, it's for the sexual part. But based on our policies, they're all together. It would mean any kind.

**Terlip:** Workplace bullying, for example, would be covered under that?

**Gutknecht:** I'm sorry. I couldn't hear you.

**Terlip:** Workplace bullying would be covered under this policy, then?

**Gutknecht:** If the bullying is directed at a protected class.

**Williams:** If not, it would fall under a different policy.

**Kidd:** Senator **Cutter**, you had a question?

**Cutter:** My question was about that. I thought it only referred to protected classes. It doesn't refer to harassment if it's not based on somebody in a protected class.

**Gutknecht:** Correct. It is all based on a protected class.

**O'Kane:** Only protected classes can be harassed? I'm confused.

**Gutknecht:** Under the policy. This policy is a civil-rights-based policy.

**O'Kane:** Really? I don't have civil rights?

**Gutknecht:** There are other policies that cover other misconduct.

**O'Kane:** So I could be harassed sexually?

**Gutknecht:** Yes, you could.

**O'Kane:** Many other ways, apparently, I couldn't.

**Kidd:** You could be harassed racially, also.

**Gutknecht:** Yeah. On race, color, gender, national origin...

**O'Kane:** I'm not a protected class, my race.

**Gutknecht:** Yes, you are. If someone treats you differently because of your race, color... Does that make sense when you frame it that way?

**O’Kane:** Okay. It does.

**Terlip:** Could you tell us what other policies then cover harassment? We don’t need to go into detail, but I’d just like to know where general harassment is covered?

**Gutknecht:** You bet. At the end of this policy, we have other policies listed that are related. For employees specifically, there’s a retaliation and misconduct reporting policy. We’re also very close to putting through a specific bullying policy.

**Terlip:** Thank you.

**Gutknecht:** You’re welcome. Okay, so we can go to the next slide: What does reporting look like? I think this will get to your question, Steve. We have difference in reporting versus private reporting and confidential reporting. Confidential reporting is really held for people in positions that because of their positions, they are able to keep a report like this confidential by the true sense of the word. That is reserved for people in advocate roles, and we mean victim advocate roles that are certified through State procedures, mental health counselors and health care professionals on our campus-- that’s what the confidential resources are. The rest of us are all private reporters/recipients of incidents. If someone comes to us and asks us if we can keep their report confidential, what we need to respond to is to say, “I will keep your report as private as possible, but I’m not a confidential reporter. I don’t fall into that special category. I will maintain your privacy to the extent possible, and what you have to say is really important, but I am not a confidential reportee, if you want to have a confidential conversation, you need to get to the advocate, the counselor, the health care professional,” and that’s where role is really important. Once you make a report, you are able to steer these individuals to those resources right there and get them the help they need.

**O’Kane:** Seems like a long answer, and the answer in short is, “Yes, I do have to report.”

**Gutknecht:** Yes. You do need to report, but ...

**O’Kane:** (to **Cutter**) Is this what you were talking about earlier, that this would have a chilling effect?

**Cutter:** Before you got here, Joe **Gorton** of United Faculty gave a little background on United Faculty's concerns about employees reporting on other employees because that's the only part of this policy that United Faculty has standing to comment on. So, we were talking...the example that I gave was... I was concerned that if a faculty member felt they might be being harassed, and weren't sure what to do, or if it rose to actual harassment, if they confided in another colleague, that colleague would then have to report them, so this could have a chilling effect. Or, you could have say, three faculty members in the same department being harassed and not being tenured, being afraid to report, and they'd never know that there was more than one of them, which might make them more likely to report, so that was the 'chilling effect' that I was referring to before.

**O'Kane:** It seems to me that this would have an equally chilling effect if a student did **not** want it reported, and they know about this policy, they're not going to talk to you, and maybe they should.

**Gutknecht:** Can we talk through the rest of these? We just had a live example of this, this afternoon that we can talk about in generalities of how this works.

**O'Kane:** Because frankly, I'm going to step right out in front and say if a student says, "I don't want you passing this on," I won't.

**Williams:** Who is that helping?

**O'Kane:** It's not my say. If the student is not yet ready...

**Williams:** Can you go back to what's required of us by the law? The law says, once the university has been notified—if they've told you, we've been notified-- we are required at this point to now end the discrimination, prevent it's recurrence and remedy the effects. We cannot do that if we don't know about it.

**O'Kane:** Well, the student's not going to tell you then.

**Gutknecht:** The amount of details in that second bullet, the amount of details necessary, will vary from case to case. If someone's coming forward regardless if they're a student or an employee, and they are coming forward but they don't want their details shared at that point, we treat each case on a case-by-case situation. So for

example, a case came forward today where a student went to the police, reported that their had been two different sexual assaults, but they don't want that reported on to the Title IX Officer. Well the police do report, but they...the issue with that is we have to look to see if that alleged perpetrator is...if there is any pattern established with that person. That's one of the key things we're looking for: is pattern, threat, if there's a weapon involved.

**Walters:** Pattern based on police records?

**Gutknecht:** A pattern based on our records. The police have their own business and we're not going to try to be police officers here. But we have databases that we maintain of all these reports that come in and we can look to see. Does it look like there's a pattern? If there's a pattern, then is there a pattern in location? Is there a pattern in people? Is there a pattern in timing? Is it causing a safety concern for the rest of campus? Is there a continuing threat? A lot of times in consensual relationships, that have had an incident that was nonconsensual, there may not be a continuing threat to the rest of the community, and so we can treat those cases differently, than for example if someone has come in off our campus and has sexually assaulted someone and we don't know where that person is, and we don't have control over that person. That's a very different on-going threat scenario than a relationship issue that has happened on our campus. So this is where each case is so extremely different. Each case is so unique, and the amount of details necessary will vary from case to case. We minimize it to the extent we can to maintain safety for the campus, safety for that individual and make sure that we get these people the resources that they need. If they haven't yet seen an advocate, we want to make sure, one of the key elements is that we get them to an advocate who can help them process what they need to do. They can decide on their own whether they want to pursue anything or not. But our first concern is to get them the resources they need.

**Kidd:** Could you say your name please, for the record?

**Hoofnagle:** You were suggesting that it's the University's responsibility to work through and essentially fix it, prevent any future threats and so on, and It's my understanding

from the Title IX language that the investigation—the expected investigation is only to the extent to which the University can actually perform that investigation based on the information that’s been provided. So in other words, information can be provided about an incident without identifying the details being provided, and then the University can then determine from there, or begin an investigation from there as far as they are able: that’s the Title IX expectation. The Title IX expectation is not that you will hunt it down and solve the problem and so on, but that you will do this investigation as far as you can, and that if the student does not want to be identified, then the student doesn’t need to be identified in this situation.

**Williams:** We do initially allow them to remain unidentified if that’s what they wish. Yes.

**Hoofnagle:** Unidentified to you? Or are we are expected to identify their names to you? Or...

**Williams:** We like to get as much information as possible for us to follow up with that student; to provide the resources to help that student. You’re saying if a student comes to you, they tell you something, but they’re ready to talk; they’ve come to you, they’re ready. They may say that they’re not ready, but if they spoke it out loud, they’re ready. I think that they’re getting closer to being ready--not to tell the whole world, but there is something that I think we can do to help them. We do allow, to an extent the names can be held private. But let’s say that we hear something like we heard at the beginning of the fall semester. Three different assaults in the same weekend: They all thought they got roofied at Sharky’s. That starts meaning something to me, right? I want to find out more information so I can go to Sharky’s and say, “What the hell’s going on at Sharky’s?” I can get the police there and try and do something. If I hadn’t heard about any of these, I would have no way to go back and figure out what’s going on at Sharky’s. Not even compared to what these women are going through, but whatever is happening at this establishment, so closely attached to our campus.

**Hoofnagle:** The student’s autonomy--victim’s autonomy can be maintained through non-disclosure of identifying information while also disclosing the event in other words, so that it would respond to Steve’s concern, while also reporting the event.



**Gutknecht:** Sometimes what this looks like-- say a student has come to you and reported that they've been sexually assaulted. You call one of us up and explain the dynamics of the situation. Don't share names, but to share with us, "She really wants to remain confidential (and I'm going to use a 'she' example here) and she is not ready to disclose her name. Do we absolutely need to do that at this point?" We continue that dialogue about "What do you know? What do we know about the dynamics of the circumstances going on?" And depending on how that conversation goes, it might very well be that we say, "Okay, here's what you need to do. You need to encourage her to go to the Victim Advocate. You need to encourage her to go here. You need to encourage her to go there." Then we touch base with you later in that day, and say, "How did it go? Do you feel comfortable that she's really getting the services that she needs?" And those are the kind of conversations that we have on a case-by-case. If somebody absolutely does not want to pursue a process, that's fine, but we want to make sure they get the resource they need and then further we can't do anything, for example if they need a No Contact order, or they need to change their class schedule or they need to change living arrangements, we can't do that without knowing who we're dealing with. Does that help answer your concern there?

**Andersen:** That again is their decision. They can choose to share that.

**Gutknecht:** Yeah. We can offer those resources, but we don't do it without them asking for it. Exactly.

**Brod:** I'm Harry Brod. My concern is that encouragement to report, coming from me at a time of student vulnerability is an abuse of authority. There's no way to stop encouragement from turning into pressure, and that imperils our students because when word gets out that people are pressured to report, you will have less reporting. The function of the University needing information, this becomes a self-defeating policy. We had as a consultant on campus a number of years ago, a psychologist, David **Lisak**, who worked with the military on this. And he went through incredible difficulties to convince military command that you will get more information if you allow confidential reporting--eventually, because more people will eventually come forward if

you keep them in control of the process, if preserve their autonomy and any pressure to report is self-defeating. We will end up knowing less. We will be less able to formulate correct policy, and we imperil our students.

**Gutknecht:** Our reporting continues to increase, for what it's worth.

**Zeitz:** I just wanted to verify, so if a student came to me and said they got a roofie or something like that over at a bar, I could report the incident, but not necessarily report the name? Is that what you're saying? Initially, I could report the incident--I think your idea that if there's a pattern going down, that's an important thing to have. Not the name. I could then work with the student and recommend them going to an advocate, or someone else to help support and work that out, that would all be copacetic, correct? I don't see how that would cause the kind of problems that you're talking about.

**Hakes:** "Initially," you say. I'd like to have you explain. Could you come back to me and say, "You have to give me the name"? Could you come back and say that?

**Williams:** I guess...We say initially because if there's a situation where find out more information, like we know that it was the third time someone's been assaulted in Bender Hall. It would be nice to be able to figure out if there's a connection.

**Hakes:** Can you come back to us and say, "You must give us the name"? That's a very simple question.

**Williams:** Technically, I guess by the policy, we could.

**Cutter:** We could, we don't always. Maybe that would be a good way to revise it, that would make people feel more comfortable and frankly, I think it would make it easier for us to encourage students to report. If they felt...not pressure them into it, but if they felt so inclined. I think when I see students in these situations, the first thing I do is to encourage them to go see a counselor, because I figure the counselor is much better equipped to get them into a place they need to be without pressuring them, like you're suggesting.

**Williams:** I don't want them to think that we're pressuring anyone to do that. I think the only reason we want people to report is to help the student. It's not to get people in jail

and things like that. That's not what we're here for. We're here to help our students be successful.

**Cutter:** I understand that, but the thing is if faculty know in the back of their head that it's technically possible for Title IX Officers to come and later demand the name of a student, that's going to create a real chill, I think. But I think if faculty knew they could never be required to disclose the name of a student if a student really didn't want their name disclosed that would help a lot. I'm talking about that as a revision.

**O'Kane:** That's not what they were saying.

**Swan:** She says it's a revision.

**Cutter:** I'm talking about that as a revision.

**Gutknecht:** Understood.

**Kidd:** We had a question in the back.

**Byrd:** Jeffery **Byrd**, so even the initial flexibility that we're talking about here in terms of how much information must be disclosed right away, I mean that was something that I think was not really a part of the training initially and if this is true, I think at least knowing that there's at least some sort of flexibility in the beginning would be a welcome thing to a lot of people.

**Gutknecht:** Good point. Thank you, Jeff.

**Walters:** One minor, technical point: Does any of this apply if the initial or say subsequent faculty conversation takes place after hours and off campus? Private home? Where is the jurisdiction?

**Williams:** As far as Title IX is, whether the jurisdiction has an impact on the campus, so where it's a work environment, they work together that would have a campus impact not matter if it happened off campus. The same with our students, if it would happen off campus but if they would have classes together, or something like that, it would still have an on-campus effect.

**Cutter:** This is just another example of something...I'm a little concerned about the broadness of the policy. For example, if you teach a Women's and Gender Studies kind of class, things come up a lot. For example, I've had students come up to me and

apologize, saying like, "I can't really discuss this reading on rape because it triggers me." So this policy is so broad, it makes me wonder if the student says this to me, do I have to find out like 'Did this incident happen when you were on campus here or something that happened ten years ago'? That can just...having to technically...if that's technically reportable, that seems to me kind of...that that's going to stop conversation about sexual assault in a classroom in which that's the academic topic of conversation.

**Shaw:** Along that same line, if the student let's me know that they are already being seen by some outside counseling source, do I then have to report, since I know that someone else is seeing them on this?

**Williams:** Yes. Again, we still need to report it, even if they're already getting services. It kind of depends on the situation.

**Shaw:** They're already receiving services, but I still need to tell you, so we can offer services?

**Williams:** It depends on when it happened. Again, like Barbara (**Cutter**) was saying, if it's something that happened like when they were a child, ten years ago, that's not something that's necessarily affecting their on-campus; it's not creating this hostile environment that we're speaking about, unless their current faculty member is someone who did this ten years ago. Right? So it's one of those things that it has to have an affect now, to do something. So if it's something that's happening that is having an affect now, it's something we need to know about, if that's a way to wrap our heads around these former things that happened.

**Cutter:** Am I obliged to find out when it happened? That would be very awkward.

**Williams:** I would not say you are not obliged. I think that's when you say, "I think it would be a good idea for you to talk to someone. If you want it to be me, I am obligated to tell something, should it come out a certain way. If you don't want it to be me, or you want it to be confidential, please see a counselor," that you'd go that route.

**Gutknecht:** I don't think in that situation that you have enough information to consider it as reportable, actually.

**MacGillivray:** Hi, Catherine **MacGillivray**, Women's and Gender Studies. I'd first like to thank Leslie and Leah for all the work that they're doing on our campus. As you can imagine, coming from the Women and Gender Studies Program, I'm very invested in these issues and I'm really happy to see how all of this is being done, both to comply with the law and also to make the campus a safer place. I'd like to go back to something that you just said, Leslie. You did sort of a little practice dialog with us and that's important I think for me, and my constituency to know. Are you saying that if a student starts to talk to us, that we should stop them in the manner that you just modeled for us, and say something along the lines, "Before you go any further, I need you to know that I'm a mandatory reporter." Are you requiring us to do that?

**Williams:** I'm not requiring you to. I think that's easier for you in the long run. It doesn't put you in such an awkward position to have to make that decision later whether or not you have to report it or violate policy, right? And take your chances.

**MacGillivray:** Thank you.

**Williams:** It's one of those things that you're having that conversation and it's like for me it feels comfortable if I know the student, but I want to be upfront with you. We do the same thing with R.A.'s. It's very hard for our R.A.'s. They're mandatory reporters. They're the ones that are hearing this, and it's their friends, their peers, that are telling them. How to have that conversation whenever someone is ready to start talking, and then you kind of feel like you're cutting them off before they even get going is very hard. If it feels like it's a good time to make that comment, I would encourage you to.

**MacGillivray:** Then to follow up on that, that's for me personally, and I think for others who have come to speak to me in my capacity as Director of W.G.S. that would be a problem, because again, I can only speak from personal experience and anecdotally, but the many many, many, times, as you can imagine again, given what I teach, that I have had students come to talk to me about these issues, I feel quite sure of course-- I don't have a crystal ball, so again, I'm just speaking, giving my best guess-- I feel quite sure that if I had interrupted those conversations with something like that, the conversations would have been shut down. And I've had many students who have come to report to

me also share that they're sharing with me and I'm the first human being they've told the story to. So that really concerns me. The second thing that concerns me about the language that you just used is that you said that I should do that to protect myself, because otherwise I might be violating the policy. So I also just want to share that I'm very troubled. Very troubled by what I consider the ethical dilemma that would put me in. I don't appreciate being told that I have to choose between what I think is best for the student again, given my experience—again, that's all I can go on-- or getting myself in trouble. I don't think this helps. I don't think this helps our students.

**Williams:** I agree with you 100%: it's a very hard situation. Obviously in my role, I hear a lot more than I wanted to and it's a very hard position, but whenever you see what the federal government is doing to our schools and the hundred and some schools that are now under investigation, we have an obligation, so it is putting us in this very precarious situation. You know, that we're stuck between a rock and a hard place in the sense that we have to make hard choices.

**MacGillivray:** If I could just say one other thing, I appreciate being allowed to take the time. So then I guess what I still don't understand is, and I'm not trying to say this rhetorically, I really don't understand it, that we're trying to comply with Title IX, and we get certain recommendations in that regard--rules and regs and so on from the government. However, we still have to make decisions-- we as a campus-- about how to comply. Right? So in other words, different campuses may be complying slightly differently. We're complying in the manner of the program that's been set up here, which is what we're discussing may need to be changed. Right? So the little research that I've done, and it comes up also in your slides, indicates that there's a difference between, and I'm forgetting the language...What are they called?

**Cutter:** Responsible employees.

**MacGillivray:** Responsible employees, right? So it's our...we have to determine, who we're going to put on the responsible employees list. Is that correct?

**Williams:** Yes.

**MacGillivray:** So then, I guess my question would be, and I think this is what needs to be a part of the campus conversation around us in terms of tweaking, if that's the majority sentiment, is in this document that I have, that's called, "A Sexual Misconduct Model; Policy and Model Grievance Process." For example in this document, and again it's just one document, but I think it's interesting to note that in their responsible employees list, they do **not** include for example, R.A.s and faculty members. So I think that's something that we need to have a conversation about. Why is it being included on our list, and is this something that we need to think about maybe changing as we move forward?

**Williams:** I think...

**Cutter:** I'm sorry, can I add a little bit to that because I think you're talking about the National Center for Higher Education Risk Management, that's their model policy. Catherine also sent around a little article written by the managing partner who specifically writes that, "responsible employees will vary from campus to campus," and his argument is that "mandatory reports from all employees will create a chilling effect on reporting, especially since the law imposes no duty on R.A.'s, faculty and other non-supervisory employees."

**Williams:** What year was that written by Brett?

**Cutter:** This is after the "Dear colleague" letter of 2011. I'm not sure what the...

**Gutknecht:** I think that he wrote in that in 2012. I might even have it with me here.

**Williams:** Sorry Leah, if I've taken all your thunder, but I think we look at, we know Brett very well. We've done all of our training with Brett and his company, and we actually went to his organization to figure out how to get this into one policy, so it's their model that we're actually using. If you go back to one of the beginning slides, one of the phrases is when you're determining the responsible employee, is "a student can reasonably expect that this person has some authority." So Catherine, I'll pick on you, as an example.

**MacGillivray:** Please.

**Williams:** You have multiple hats on this campus, right? So as a supervisor or Director of Women's Studies, that's one role, I think you probably advise some student groups, you're also a faculty member, and you're also just a human being. Right? So any time a student comes to you and starts talking, which hat do you have on? Right? So if you have these two hats, okay, you don't have to report, but if you have these two hats, you have to report. So whenever we sat down and started talking about the thousands of employees that we have-- there are approximately 1800 employees that we have here-- and try to figure out each one, what they are on a given day, and then have to figure out whether or not they have to report, it starts getting very complicated for each person and those making those decisions. So we really felt that any student can reasonably believe that a faculty member has some kind of authority, so we went with the model that's more encompassing, because we think it would be overall something that's better for our students.

**Gutknecht:** This was one of the first pieces of this policy, the policy is what --18-pages long, so you can imagine how long it took to get all of this together-- but the reporting responsibility is the first part --piece--that we went after because we knew how important this part was. And Leslie's right. We started writing every which way and considering, if this then this, and it became so cumbersome that we were afraid that all we were going to do was to create mass confusion and you'd have a student with you, and you'd be going, "Now wait a minute, I can't understand my role here." So we did admittedly try to make it... 'easy' doesn't feel like the right word here—but as simplistic and easy to understand.

**Williams:** If you want to add on the law we're not talking about today, if you want to add in Clery, that has a whole other definition of whether or not you qualify.

**Smith:** I would like to say that I'm here as a faculty member, as the majority of us are, but I have empathy for everything that's been said, and given a choice, I would be more inclined to think that judgment, discretion, would play a role, but having said that, I want us all to be aware that Leslie and Leah are trying to help the University avoid the ultimate penalty, which is the Department of Education is threatening some schools



nationally prominent universities, with loss of all federal funds, which would effectively, it's hard for us to think about it that way, close the University. If all of a sudden financial aid, every dollar... I'm not saying they'll ever pull that trigger, but they're threatening it at nationally prominent schools, as I understand it from a general-purpose reading. We may realize that it's hard to hear what Leslie and Leah are telling us because I think we are raising cogent, rational, logical questions. They have their backs against the wall, with the best interests of the University trying to make it so that U.N.I. doesn't become one of the universities talked about in the national media, and how you do that tradeoff is one hell of a job, and so we have to be appreciative of them trying to do what they think is in the best interest. Even though some of us that have knowledge and expertise in this area realize, that there's going to be an unintended consequence. But you know, with a lot of things in life, there are unintended consequences.

**Peters:** Actually Gerald, that's quite similar to what I was going to say. Simply that I wanted to say that it's possible that there aren't very many tougher jobs in Higher Education right now than people responsible for implementing Title IX on campus because it changes so quickly, because not only does Congress routinely adjust the law, but then the Department of Ed routinely sends down "Dear colleague" letters, or makes other kinds of regulatory adjustments or even recommendations which when they come from the Department of Ed aren't really recommendations, and so you referenced the Clery Act. A lot of us were at this training, the Clery Act training in the fall, came about because the Department of Ed changed it's mind about what constitutes a campus security authority. A campus security authority now includes anybody who advises an academic club on campus, which means you have literally hundreds of people across campus designated as security authorities, which seems to me personally, muddies the line of authority. Muddies who's responsible; makes it more difficult for the institution to track and hold people accountable the reporting of incidents. But, nonetheless, that's what the federal government said has to be done. The Clery Act and Title IX are separate laws, but they overlap a lot. They have separate confusing... and then add on to all of that the fact that most of us around the table have not been trained in how to counsel

students on issues like this. We're not prepared most of us, for a student to walk into our office and tell us something like this. That might speak to the types of training that maybe faculty should have to deal with today's students, but the fact is that most of us don't have that kind of training, and so that adds another dimension of complexity on to it. I did want to ask one quick question and that is have you seen anything similar to where the Department of Ed has broadened the definition of a campus security authorities? Have you seen anything similar on Title IX with the Department of Ed, say in recent years broadening in any way its definition or recommendations on who is 'responsible person' under the law?

**Williams:** No. When I went back and was doing the stuff for this Power Point, if you look all the way back to the 2001 guidelines, it's the exact same phrasing as it was in the 2013 Frequently Asked Questions. So it's been consistent throughout. They leave it that broad just for that reason.

**Gutknecht:** But what has been happening is that the universities that have been under review, as several of you have commented about, that it's up in the hundreds now of the number of universities that are currently under investigation. As those settlement agreements come out, and those universities are required by Department of Education to take certain steps, that's where we're seeing more of this language tighten up. So it's still the same in all the regulations you look at and all the guidance, but if you look at some of these settlement agreements, that's where you see it tightening up and it is definitely a trend amongst Higher Ed institutions that in the last year any number of institutions have moved to the reporting responsibility being across campus.

**Peters:** And so just to be clear about that, when you see a settlement agreement that includes a definition say, let's just say for argument's sake, similar to the one you adopted, you see that and you say, "This is what you need to do too, this is one thing at least that will make you less likely when it gets the scrutiny of the federal government," is that the kind of thing that you think about when you're coming up with definitions like this?

**Gutknecht:** It enters into it. It's not the dominant issue, but it's certainly does enter in. Some of those agreements have been very strongly worded and monitored, and so it does make other institutions pay attention. That in order to get through that process that institution had to do X,Y, and Z to get through this process with OCR, and so if they couldn't get through without doing those things, those things must be pretty important.

**Brod:** I found when you go to back to the slide it is extremely helpful. You clarify that there was a basic choice you made in the very beginning, and I think the whole conversation stems from that, and the way I now hear it is that you were forced into a difficult choice between clarity and accuracy. It's clearer to just declare everybody mandatory reporters, and I'll use your words, "It's not cumbersome. It's not confusing." My concern, and I think the concern of many of us, is It's not accurate. We are not mandatory reporters. We are a University. We can take upon ourselves the burden of clarifying the confusion, and the cumbersomeness of accurate definitions and distinguishing who's a mandatory reporter and who's not. But, my fear is that going for simplicity, we're all going to be mandatory reporters. It's first of all wrong: we're not under the statute, and secondly as has been already said, it's dangerous. The mandatory reporting produces less reporting in the long run, and it imperils all of us and especially our students, so I want to urge you to go back to the beginning, and take the other fork in the road.

**Williams:** Just for clarification, just so you know, 'mandatory reporters' is the Clery and 'responsible reporters' is Title IX. In the time that we have had more people report, we have had many more students...I've had lots more students come forward and get help and our continuing education, and are not dropping out for reasons we don't know. We have had a lot more people come forward than before.

**Swan:** So we're here of course as the faculty, it's not the R.A.s. It might make sense to have the R.A.'s do this, but this is the Faculty Senate, and we want to think about the faculty role in this policy. My understanding is that few if any of the Title IX complaints across the country that are being investigated have to do with faculty refusing to report to authority; they all have all to do--or the majority of them have to do-- with

administrators, including Title IX Officers, failing to investigate and prosecute rapists. And so part of the problem faculty have here is that in addressing the problem of administrators not pursuing known rapists that have been reported to them, you've come up with a policy that then inhibits the faculty who often are participating-- helping the victims seek justice and help-- taking that away from the victims by saying that it's actually helping them. And since we don't have to include faculty, it would be very easy to announce to the whole campus that faculty aren't included in this compulsory reporting to the Title IX Officer. Certainly as professionals, as people who care deeply about our students, we do report when absolutely obvious, to actual authorities to deal with violent crimes, that sort of thing, who then may also turn around and report to you, et cetera. Otherwise use our judgment and our professionalism to help the student, as best as possible, which may eventually involve coming to the Title IX Officer on campus, but it chills it, it cuts it off, the faculty are saying, if we have to always wonder, "Do I have to report to avoid bureaucratic problems for myself?" That's why we want you, many of us want you, to change this policy to exclude faculty. It's a simplest thing in the world to exclude faculty who are not administrator. Obviously if you're an administrator with a faculty appoint, you're obviously an administrator. You are responsible; everyone knows you're responsible. This is why many of us on the faculty wanted the Faculty Senate to talk with you and to encourage you to take away this burden to victims keeping them from talking to the people they trust and come to for help.

**Gutknecht:** One of the elements that we've not talked about...

**Kidd:** I don't mean to cut you off, except it's actually 5:00 and so in order to keep going we would need to table this discussion for another time or have a motion to extend the meeting for 10 minutes:

**Zeitz:** So moved.

**Kidd:** So moved by Senator **Zeitz** to extend the session. Second by Senator **O'Kane**. All in favor? (*One opposed*) We'll extend the session for ten minutes.

**Gutknecht:** One element that we have not discussed here, we've been focused on Title IX, and there is also Title VII involved in this policy, and if you reflect back on the old policy, if you knew anything about the reporting responsibilities in that, if you have any supervisory responsibility, you are required under Title VII to report. So as we moved into this policy, what I see as one of these issues, and I'm not saying it's not insurmountable, I'm just offering it as additional information, that what we have so often in academics is that people are moving in and out of supervisory responsibility. So one semester you might supervise a GA, or students or junior faculty member and the next semester you don't, and so your role is changing and that's hard, for any of us to remember, okay? So the last thing you want to do when you're talking to somebody is to step back and say, "Okay, what's my role and responsibility here?" So that was another element that we took under consideration.

**O'Kane:** I'm just wondering what the role of the Faculty Senate is in this discussion. Are we advisory or is this just informational?

**Kidd:** We could ask for the policy to be adjusted. Yeah. We can do this.

**O'Kane:** It is advisory?

**Kidd:** Yes. We don't have full veto power.

**Gutknecht:** If I could go back to Jesse's (**Swan**) comments about the cases that are out there. I think sometimes the Title IX officer gets the rap, but what has really happened is that someone in the University has not stepped up to the plate to respond effectively to those students. So it does come out as the Title IX process fell apart. So one of those elements that we talked about and went back and forth with in the development of this is what if, and let's the student example again. What if a student came to one of us and we didn't take the action to report it on, they didn't receive any interim measures or remedial actions or anything, and then a year later, they do decide that they wish they would have handled things different and they go to their attorney, just for sake of example, and say, "Hey, this happened to me while I was on campus at U.N.I. and I told faculty ABC and nobody did anything for me." That's another element of this that we're trying to help everybody: Make sure the student gets what they need, but also make

sure that you're not put in a position where what you thought you were doing to be helpful comes back and stings you later.

**Hakes:** It almost seems like as much boilerplate as I have forced upon me on my syllabuses—syllabi-- that I want to put on my syllabus, forget about me, my students should be aware that I'm a mandatory reporter. They're the ones that aren't aware. My syllabus should have boilerplate on it that says, "I'm a mandatory reporter." It's a shame. It's terrible. It says, "Don't tell me anything," and then I'm going to put on there, "and here's the phone number if you really have something. But don't come to me because if you tell me anything, I've gotta"...I don't want to do that, but essentially that's where we've left this discussion...let them know.

**Williams:** We're not saying you can't help them. We're not saying you can continue to help further their...

**Hakes:** They don't want...If you want confidentiality? Don't tell me.

**Gutknecht:** The organization that Barbara quoted from as Leslie pointed out, that's my professional organization, and that's where I have all my certification from in terms of Title IX. We know what they have to say. But even their attorneys disagree on that particular issue. One of them is very much in favor of syllabus quotes, notices-- boilerplate notices. Another practicing attorney within that same advisory group says "absolutely not." So then we appreciate this dialog, we really do, because it's everywhere. It's in my professional organization, we don't agree because it's such a difficult conversation. There is no complete right answer.

**Heston:** I found myself wondering if there might be a way of letting students know which side of the...giving faculty the choice, but letting students know which side of the mandatory reporting, if I can use that language...

**Williams:** And we shouldn't.

**Heston:** Privacy reporter, whatever-- which side we fall on. "That I will maintain your confidentiality; I will not report it if you don't want me to," versus "Okay, I'm sorry. I really don't want to have this burden. I don't want to make these choices. I don't want to be part of your... I don't want to be enmeshed in this in any way, shape or form. So I

want to hand it over if you will, to people who know what they're doing by reporting it to you and I'm going to do that," and you know that in advance so the students can choose ahead of time. So you just put a sign outside our door: Tell me. Don't tell me-- Something like that. I'm being facetious, but it is this notion of faculty have to have the right to do what they truly believe is in the best interest of the students, and when you lock us in, you take that away from us. You take away our professional judgment, and you take away our student's ability to trust us. On the other I hand, I do agree that we have responsibility to look out in some ways out for our students, and that is a difficult road. I've had a student walk in with fingerprints around her neck, and what do you do? I said, I've notice this. This does not look good, is there anything I can do to help?" No. She had it all fine. Who would I call? What would I do? That's not sexual harassment but clearly she had been physically assaulted. I think it's important to respect students. They aren't small children. These are not like the toddlers and the elementary school children, and the high school children-- they are adults, and they can make decisions about who they want to know, and what they want to do. I think we need to find a way to let faculty act in both ways, depending on who they are, because we are not all good at this.

**Kidd:** We only have a couple minutes left so we're going to have to end discussion very soon unless we extend the meeting again.

**Heston:** I think we need more consulting.

**Kidd:** I would think that's a good idea. Would it be appropriate to table discussion for another time?

**Heston:** Yes. Schedule another discussion.

**Kidd:** Can I have a motion to table for another time?

**O'Kane:** So moved.

**Kidd:** It's been moved and seconded. I believe we might have a second motion before we go about having a Special Meeting on February 16?

**Heston:** No, I was just going to turn in the petition, and then it was going to be your job to figure out what to do with it.

**Kidd:** Sounds wonderful.

**Hakes:** I move we adjourn.

**Kidd:** We have a motion to adjourn, a second (Second **Zeitz**). All in favor? Thank you all for coming.

**Adjourn 5:07 Hakes/ Zeitz**

**Submitted by:**

Kathy Sundstedt

Transcriptionist and Administrative Assistant

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**Follows is 0 Addenda**

**Power Point submitted by Leah Gutknecht and Leslie Williams, “*Title IX Reporting Requirements*”**

**Next Meeting:**

February 23, 2015

Ballroom C

Maucker Union

3:30 p.m.