

**Faculty Senate Meeting**

Tuesday, December 17, 2013

3:30 p.m. - 5:30 p.m. – Adelbert Hall, Toepfer Room

## AGENDA

3:30 p.m.	Approval of Minutes from the November 25, 2013 Faculty Senate meeting, <i>attachment</i>	S. Russ
3:35 p.m.	President's and Provost's Announcements	B. Snyder B. Baeslack
3:40 p.m.	Chair's Announcements	S. Russ
3:45 p.m.	Faculty Senate Leadership	S. Russ
3:50 p.m.	Report from the Executive Committee	S. Case
3:55 p.m.	Report from Secretary of the Corporation	C. Trembl
4:00 p.m.	FSCUE: Statement on Value of the On-Campus Residential Experience, <i>attachment</i>	L. Stark
4:05 p.m.	FSCUE: WSOM Minor in Leadership, <i>attachment</i>	D. Bilimoria
4:10 p.m.	FSCUE: CAS Minor in Creative Writing, <i>attachment</i>	M. Grimm
4:15 p.m.	Senate Resolution Reaffirming TOEFL Score Requirement, <i>attachment</i>	R. Bischoff
4:25 p.m.	Review of Faculty Comments on Interim Sexual Misconduct Policy, <i>attachments</i>	S. Russ





### **Faculty Senate Meeting**

Tuesday, December 17, 2013

3:30-5:30 p.m. – Adelbert Hall, Toepfer Room

#### **Members Present**

Alexis Abramson  
Bud Baeslack  
Timothy Beal  
Karen Beckwith  
Richard Buchanan  
David Carney  
Susan Case  
Chris Cullis  
Mark De Guire  
Heath Demaree  
Steve Eppell  
Karen Farrell

David Hussey  
Jean Iannadrea  
Mark Joseph  
Zina Kaleinikova  
Thomas Kelley  
Xiaoyu Li  
Deborah Lindell  
Frank Merat  
William Merrick  
Diana Morris  
Carol Musil

Ray Muzic  
Dale Nance  
Sandra Russ  
Robert Savinell  
Barbara Snyder  
Glenn Starkman  
Alan Tartakoff  
Philip Taylor  
Mark Votruba  
Rebecca Weiss  
Richard Zigmond

#### **Members Absent**

Daniel Akerib  
Joseph Baar  
Matthias Buck  
Juscelino Colares  
Colleen Croniger  
Nicole Deming  
Peg DiMarco  
Robin Dubin  
Thomas Egelhoff  
Scott Fine

T. Kenny Fountain  
Steven Fox  
John Fredieu  
Patricia Higgins  
Susan Hinze  
Lee Hoffer  
Jessica Lehmann  
Zheng-Rong Lu  
Kathryn Mercer

Sonia Minnes  
Pushpa Pandiyan  
Simon Peck  
Andrew Rollins  
Benjamin Schechter  
Nicolaus Schmandt  
David Singer  
Elizabeth Tracy  
Nicholas Ziats

#### **Others Present**

Daniel Anker  
Diana Bilimoria  
Richard Bischoff  
Melissa Burrows  
Jennifer Cimperman  
Donald Feke  
David Fleshler

Mary Grimm  
Arnold Hirshon  
Barbara Juknialis  
Ermin Melle  
Marilyn Mobley  
Dean Patterson

Sue Rivera  
John Sideras  
Lynn Singer  
Lou Stark  
Colleen Trembl  
Jeff Wolcowitz

#### **Call to Order**

Professor Sandra Russ, chair, Faculty Senate, called the meeting to order at 3:30 p.m.

### **Approval of minutes**

The minutes of the Faculty Senate meeting of November 25, 2013 were approved as submitted.

### **President's announcements**

President Barbara Snyder reported that approximately 2,000 employees (slightly more than 50% of all eligible Benelect plan members) participated in the three fall 2013 wellness activities. This was a larger number than had been anticipated. The President thanked the senators for their input on the wellness and incentive programs. More information will be provided shortly on the 2014 programs and incentives. The early action admissions process has been very successful. The average SAT scores of those admitted through the early action process are 5 points higher than they were last year. In addition, approximately 50% more underrepresented minorities will be admitted through early action than last year. The President wished the Senate a very happy holiday.

### **Provost's announcements**

Provost Bud Baeslack reported that the newest version of the strategic plan has been completed and will be available for review after the first of the year.

### **Chair's announcements**

Prof. Sandra Russ, chair, reported that the amendment to Chapter 2 of the Faculty Handbook, changing the name and charge of the Budget Committee, had been approved by the Executive Committee of the Board of Trustees at their December meeting. Comments on the Faculty Handbook and Faculty Senate By-Laws will be compiled and decisions about which committee will consider the comments will be vetted through the Executive Committee at the January and February 2014 meetings.

### **Faculty Senate Leadership**

Prof. Russ said that she has been working with the Faculty Senate Nominating Committee to identify chair-elect candidates for the remainder of the 2013-14 academic year. Robert Savinell has agreed to run for the position but it has been very difficult to find a second candidate, which is required by the Faculty Senate By-Laws. The Executive Committee at its December 9<sup>th</sup> meeting voted to approve just one candidate on the ballot for this election. Prof. Russ asked the Senate to vote on this issue also and the Senate unanimously approved one candidate on the ballot.

### **Report from the Executive Committee**

Professor Susan Case, WSOM, gave the report from the Faculty Senate Executive Committee. Next semester, each school representative on the Executive Committee will be asked to report on the activities of their respective school. Each standing committee chair will also be asked to make a report. The Executive Committee discussed whether to change the requirement in the Senate By-Laws that there be two candidates for chair-elect given how difficult it can be to find a second candidate. Some members of the committee felt that it is more important that the Nominating Committee vet each candidate and that the candidate rotate from among the various schools each year. This topic will be discussed as part of the 5-year Faculty Handbook and By-Laws review process.

### **Report from Secretary of the Corporation**

Ms. Libby Keefer, secretary of the corporation and general counsel, reported that the Executive Committee of the CWRU Board of Trustees at its December 10<sup>th</sup> meeting approved several items of importance to the Faculty Senate:

1. Resolution to approve the amendment to the Faculty Handbook to change the name of the FS Budget Committee to the FS Finance Committee and to amend the committee's charge.
2. Resolution to Approve Executive Master of Arts Degree in Financial Integrity – LAW
3. Resolution to Approve Master of Science in Medical Physiology Off-Site Delivery Program – SOM
4. Resolution to Approve Master of Science in Social Administration/Master of Public Health joint degree program - MSASS and SOM

#### **FSCUE: Statement on Value of the On-Campus Residential Experience**

Louis Stark, Vice President for Student Affairs, presented a statement on the value of the CWRU on-campus residential experience. The statement had been endorsed by FSCUE. Approximately 80% of undergraduate students live in residence halls and Greek houses on campus. While juniors and seniors are not required to live on campus many have expressed interest in doing so. The Offices of Student Affairs and Undergraduate Studies are working collaboratively to strengthen the undergraduate student experience at CWRU and believe that when students live together on campus it makes a significant difference in the quality of their experience. A senator said that by endorsing the statement the Senate would essentially be making on-campus housing a budget priority. Budget priorities have not yet been discussed by the Senate. Another senator asked whether there was data to support the idea that on-campus housing for all students benefits the entire university community. President Snyder said that studies show that students who live on campus have greater academic success. The motion to endorse the statement was tabled until national data on this topic can be presented to the Senate. *Attachment*

#### **FSCUE: WSOM Minor in Leadership**

Professor Diana Bilimoria, WSOM, presented the proposed minor in leadership from the Organizational Behavior department at WSOM. This will be the first time that the Organizational Behavior department has offered undergraduate courses. The minor will consist of five courses; two required courses and three electives. All but one of the five courses are currently being offered. The minor is intended for non-WSOM students and these students are already taking a number of the courses. The Faculty Senate voted to approve the minor in leadership with one dissenting vote. *Attachment*

#### **FSCUE: CAS Minor in Creative Writing**

Professor Mary Grimm, CAS, presented the minor in creative writing. The minor is offered by the English department and consists of 5 courses; three in creative writing courses and two literature courses. The courses are extremely popular and the minor will be particularly attractive to prospective students. Prof. Grimm said that English majors can take other creative writing classes and that the minor is geared more towards students without literature backgrounds. The department does not offer a concentration in creative writing. The Faculty Senate voted to approve the minor in creative writing. *Attachment*

#### **Senate Resolution Reaffirming TOEFL Score Requirement**

Rick Bischoff reported that one year ago the Faculty Senate had approved a recommendation from FSCUE to maintain the minimum TOEFL score requirement of 90 for fall 2013 applicants rather than increasing it to 100 as had been approved in 2011. The recommendation contained a provision whereby the FSCUE Admissions and Aid Subcommittee would revisit the issue annually and commit to maintaining the quality of the international student population at CWRU. The current recommendation is to reaffirm the approved recommendation and maintain the TOEFL score requirement of 90 for the fall of 2014. It is expected that this will be the last year that the score requirement remains at this level.

The admissions office has made great strides in increasing both the number and quality of international students at CWRU. 69% of international undergraduate students who enrolled in 2013 and who submitted TOEFL scores had scores greater than or equal to 100 as compared with 52% in 2012 and 28% in 2011. While 100 is the university's ultimate goal for all international students submitting TOEFL scores (and the standard for highly selective universities), CWRU stepped up its efforts to admit international students later than other universities, so more flexibility is needed to reach the university's enrollment goals. The enrollment of international students has significant revenue implications. The Senate discussed whether international students are able to integrate into the culture and community at the university. Rick Bischoff said that this is very difficult to evaluate but anecdotal evidence indicates that they are. A senator said that there is still a problem in the classroom even with the higher TOEFL scores. Another senator asked about the career placement of international students. The Faculty Senate voted to approve the resolution reaffirming the TOEFL score requirement of 90 for the fall of 2014. *Attachment*

### **Review of Faculty Comments on Interim Sexual Misconduct Policy**

Prof. Russ said that former Senate chair Professor Steven Garverick had charged six of the Senate standing committees with review of and comment on the university's Interim Sexual Misconduct Policy. The committees sent their comments to Prof. Russ and she summarized them in a document made available to the Faculty Senate on the Google site. The FS By-Laws Committee's comments were also posted on the Google site since their comments were lengthy and detailed. Prof. Russ presented a brief overview of the comments and said that all comments will be provided to those who will be revising the policy during the spring semester. Prof. Russ turned the discussion over to Marilyn Mobley, Vice President for Inclusion, Diversity and Equal Opportunity, and Colleen Trembl, Deputy General Counsel. Several issues were discussed:

1. **The requirement for reporting based on hearsay.** Several faculty members were concerned about the requirement that a member of the university community report information learned or overheard from a third party. Marilyn Mobley stated that the Dear Colleague letter from the US Department of Education mandates this reporting. An investigation must begin even if the result is that there aren't sufficient facts to go forward. If the university knows or should have known about an incident it must do what it can to investigate. Several other universities had complained about this reporting requirement to the DOE but it is too late to do so now.
2. **The qualifications of investigators.** The concern expressed related to situations where possible sanctions were serious enough to warrant, for example, expulsion from the university. Should professional investigators be hired? Marilyn Mobley said that staff in the OIDEO office have experience with investigations of this type and routinely seek assistance from the Office of General Counsel. Colleen Trembl reminded the Senate that the investigator is only responsible for making the determination of whether a matter goes to a hearing or other process. Both parties have appellate rights also. The community standards board receives extensive training and a student is a required member of the board when dealing with a student matter.
3. **Whether the process is fair to both parties, or does it presume the guilt of the accused.** Marilyn Mobley said that the process protects the rights of both parties and there is no presumption of guilt.
4. **Individuals are being asked to sign legal documents.** During the informal and investigative process individuals are being asked to sign legal documents with implications that may not be understood particularly by those whose primary language is not English. It was suggested that an individual's rights be explained in simple and clear language.

5. **Confidentiality issues.** During the informal process individuals, including the parties, are not permitted to share information with members of the CWRU community. Who can they confide in? Marilyn Mobley said that there are specified individuals and offices within the university that can be contacted for support.
6. **Refusal to participate.** If a complainant is only interested in pursuing a criminal proceeding must the university go forward with its process? The answer is that the university must go forward but the complainant is not required to participate.

Marilyn Mobley said that that the OIDEO office will be accepting further comments on the interim policy but that the goal is to produce a final policy by the end of the spring semester. She is still willing to lead information sessions within the schools or individual departments. Training for the university community on requirements of the final policy may begin as early as next summer.

The meeting was adjourned at 5:26 p.m.

Approved by the Faculty Senate

A handwritten signature in cursive script, appearing to read "Rebecca Weiss".

Rebecca Weiss  
Secretary of the University Faculty

**Secretary Report  
The Board of Trustees Executive Committee  
December 10, 2013**

WEATHERHEAD SCHOOL	\$100k provide support to students – Tim Callahan
Approve 27 Junior Faculty Appointments	CAS-1, MED-11, CCLCM-14, NUR - 1
Approve 1 Senior Faculty Appointments	MED-1
10 faculty appointments to Emeritus Status	2 – CAS, 1 – WSOM, 6 – MED, 1- NUR
13 faculty promotions to assistant professor	1 – DEN, 10 – MED, 2 - NUR
Authorize the Award of Degrees January 2014	90 undergraduate 500 graduate

Faculty Senate recommendation to the President for consideration to the Board of Trustees the following Faculty Senate resolutions:

1. Resolution to Approve Amendment to Faculty Handbook to change name of FS Budget Committee to FS Finance Committee and to amend the committee's charge.
2. Resolution to Approve Executive Master of Arts Degree in Financial Integrity – LAW
3. Resolution to Approve Master of Science in Medical Physiology Off-Site Delivery Program – MED
4. Resolution to Approve Master of Science in Social Administration/Master of Public Health joint degree program - MSASS and MED

## FSCUE STUDENT LIFE RESOLUTION

As the University seeks to build its undergraduate enrollments based on an entering class of 1250 students, we affirm the value and importance of an on-campus, residential experience for undergraduates. Such an experience should bring faculty, staff, and students together in pursuit of the full range of our developmental goals for undergraduate education. We urge that planning be based on the assumption of continuing our current residence requirements and the ability to offer on-campus housing to all students who request it.

CWRU Action Form for Majors/Minors/Programs/Sequences/Degrees

(instructions on back)

Docket # \_\_\_\_\_

College/School: Weatherhead School of Management

Department: Organizational Behavior

PROPOSED:  major  
 minor  
 program  
 sequence  
 degree

TITLE: Leadership Minor

EFFECTIVE: FALL (semester) 2014 (year)

DESCRIPTION:

The Organizational Behavior Department of the Weatherhead School of Management would like to offer a minor in the skills of leadership for undergraduate students. The primary objective of the Leadership Minor is to provide students with an in-depth knowledge of the fundamental skills of leading people in organizations through a combination of theory, introspection, self-development, experiential learning, teamwork, and practice.

As with other minors at the Weatherhead School, the Leadership Minor will comprise five courses. Students electing this minor must take two required courses (ORBH 250 and ORBH 251) and three elective courses selected from among four elective options focusing on leadership skills and topics.

See detailed Proposal attached.

Is this major/minor/program/sequence/degree:  new  
 modification  
 replacement

If modification or replacement please elaborate: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Does this change in major/minor/program/sequence/degree involve other departments?  Yes  No

If yes, which departments? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contact person/committee: Diana Bilimoria

SIGNATURES:

Department Curriculum Chair(s)/Program Directors:	<u>Diana Bilimoria</u>	DATE
Department Chair:	<u>Diana Bilimoria</u>	<u>10/23/13</u>
College/School Curriculum Committee Chair:	<u>Jennifer Johnson</u>	<u>10/23/13</u>
College/School Dean(s):	<u>Jennifer Johnson</u>	<u>10/31/13</u>
UUF Curriculum Committee Chair:	_____	_____

File copy sent to:  Registrar  Office of Undergraduate Studies/Graduate Studies  
 Other: \_\_\_\_\_

**Organizational Behavior Department  
Leadership Minor Proposal  
September 2013**

**Overall Plan:** The Organizational Behavior Department of the Weatherhead School of Management would like to offer a minor in the skills of leadership for undergraduate students. The primary objective of the Leadership Minor is to provide students with an in-depth knowledge of the fundamental skills of leading people in organizations through a combination of theory, introspection, self-development, experiential learning, teamwork, and practice.

As with other minors at the Weatherhead School, the Leadership Minor will comprise five courses. Students electing this minor must take two required courses (ORBH 250 and ORBH 251) and three elective courses selected from among four elective options focusing on leadership skills and topics.

**Required Courses:**

ORBH 250 - Leading People (LEAD I)  
ORBH 251 - Leading Organizations (LEAD II)

**Elective Courses (any three)**

ORBH 303 - Leading Teams  
ORBH 370 - Women in Organizations  
ORBH 380 - Managing Negotiations  
ORBH 391 - Leadership in Diversity and Inclusion

**Required Courses**

**ORBH 250 – Leading People (LEAD I)<sup>1</sup>**

Description: The principal goals of this course are to help students learn about the context in which managers and leaders function, gain self-awareness of their own leadership vision and values, understand the options they have for careers in management based on their own aptitudes, orientations and expertise, and develop the fundamental skills needed for success in a chosen career. Through a series of experiential activities, assessment exercises, group discussions, and peer coaching, based on a model of self-directed learning and life-long development, the course helps students understand and formulate their own career and life vision, assess their skills and abilities, and design a development plan to reach their objectives. The course enables students to see how the effective leadership of people contributes to organizational performance and the production of value, and how for many organizations, the effective leadership of people is the driver of competitive advantage. This is the first course in a two course sequence. Prereq: At least sophomore standing.

Learning Outcomes:

- Demonstrate an understanding of how the effective leadership of people contributes to organizational performance.

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<sup>1</sup> Previous designation was MGMT 250. Previous title was "Organizations and People I". Revised description provided.

- Apply relevant knowledge of individual-level and group-level organizational behavior and human resource management to become more effective as a leader and manager.
- Develop an accurate self-assessment of your strengths, vision, values and skills to enable you to become a more self-aware leader and manager.
- Identify and explore a long-term career target based on your interests and understanding of self.
- Create a plan to achieve your learning and development goals through yourself and others.
- Elevate knowledge of effective management and leadership and what it takes to be successful in those roles.
- Gain experience meeting an objective through team participation.
- Develop business writing skills.

### **ORBH 251 – Leading Organizations (LEAD II)<sup>2</sup>**

Description: The principal goal of this course is to help students enhance their leadership skills by understanding how organizations function through the lenses of structure, culture, and power/politics. The course enables students to discern how leaders function effectively as they integrate goals, resources and people within these constraints. Students learn about these organizational lenses while developing their own leadership and professional skills. Prereq: ORBH 250 or MGMT 250 and at least sophomore standing.

#### Learning Outcomes:

- Apply relevant knowledge of organizational-level organizational behavior and strategic human resource management to become more effective as a leader and manager.
- Demonstrate an understanding of how effective design of organizational systems contributes to organizational performance.
- Understand how the most effective leadership decisions are made within the context of an organization's structure, politics, and culture.
- Gain experience meeting an objective through team participation.
- Develop professional presentation skills.

### **Elective Courses (any 3 out of 4)**

#### **ORBH 303 – Leading Teams<sup>3</sup>**

Description: This course is designed for students who want to increase their understanding of interpersonal and team dynamics. It is designed to help you to build more open and effective relationships and to improve your ability to cooperate with and lead others to work effectively in today's increasingly team-oriented organizations. The emphasis of this course is on learning about oneself in the

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<sup>2</sup> Previous designation was MGMT 251. Previous title was "Organizations and People II". Revised description provided.

<sup>3</sup> Previous title was "Leadership and Personal Development". Revised description provided.

context of others based on the here-and-now experience of the group. Prereq: At least sophomore standing.

Learning Outcomes:

- Understand effective group dynamics and how your behavior contributes to these dynamics.
- Practice methods of influencing and motivating others.
- See how different communication styles bring different team results.
- Understand differences and similarities (race, gender, age, nationality, ethnicity, personality, etc.) and how they affect your relationships and behaviors in teams.
- Become more aware of your own feelings and behaviors in small groups, and understand the effects of these on others.
- Learn how to take actions to improve group dynamics.

**ORBH 370 - Women in Organizations**

Description: This course explores the unique challenges of life for women, with a particular focus on entering modern adulthood after getting a degree. At this stage many choices can be made regarding future careers and relationships. The class guides thinking about how to create successful work-in-life integration in a global economy including cross-cultural comparisons. This course broadens self-knowledge about personal identity, direction, leadership, and values about the context of work in life; increasing gender intelligence to understand gender dynamics in the workplace and their intersection with race, ethnicity and class; and enhancement of leadership capabilities in organizational systems. Through application of concepts to case studies, experiential learning, and an interview project with practicing women professionals, students gain a greater awareness of key issues and concerns influencing effective participation and leadership in the work force. Offered as ORBH 370 and WGST 370.

Learning Outcomes:

- Understand unique challenges of life (in your twenties) including building inner resilience, making decisions that are right for you, and working out issues around career-life integration for this stage of your life.
- Gain understanding of biological, interpersonal, organizational, and societal structures and processes around gender (and race/ethnicity) that impact women and men in organizations, revising male/female relationships to meet demands in global economy.
- Enhance understanding of self in relationship to others in work settings, further developing interpersonal, communication, leadership, and analytic competencies necessary to succeed as global citizens.
- Increase gender intelligence and cross-cultural intelligence between men and women.
- Facilitate integration of personal experiences and thoughts, with new knowledge of issues surrounding women in organizations, into a framework for personal decisions, actions and personal development in order to grow through life experience.
- Understand that the issues of women's rights are human rights.
- Gain transformative leadership skills to make a difference.

## **ORBH 380 - Managing Negotiations<sup>4</sup>**

Description: Negotiation is the art and science of securing agreements between two or more interdependent parties. Negotiation skills are critical to influencing others and thus to effective leadership. The good news is that negotiation is a skill that can be developed. In this interactive course, you will learn how to be a more effective negotiator by learning about the theory and processes of negotiation, participating in negotiation simulations, reflecting on your own and others' negotiation experiences and completing assignments designed to help you hone your negotiation skills. This will be done through a variety of means, including: understanding the theory and processes of negotiation, participating in negotiation simulations, reflecting on your own and others' negotiation experiences and completing assignments designed to help you hone your negotiation skills. Prereq: At least sophomore standing.

### Learning Outcomes:

- Develop leadership skills by creating, and not just claiming, value
- Be better prepared for negotiations in order to avoid common negotiation mistakes
- Obtain your fair share of what is negotiated
- Recognize which strategies are effective for particular situations
- Work with people whose backgrounds, expectations and values differ from your own
- Improve your analytical abilities in understanding human behavior in cooperative and competitive situations to improve your ability to lead
- Develop confidence in the negotiation process and in your self-confidence as a negotiator and leader

## **ORBH 391 - Leadership in Diversity and Inclusion: Toward a Globally Inclusive Workplace<sup>5</sup>**

Description: Global workforce diversity issues from individual, group, organizational, and societal perspectives are addressed in this course. Analytical frameworks for understanding barriers and best practices in management and integration of diversity in organizations are presented. Leadership development for supporting diversity and inclusion is a major focus. Emphasis is on tools, strategies, ideas, and techniques that enable tapping the talent of diverse individuals, leading productive workgroups and organizations when people from different places, backgrounds, ages, and religions come together in the workplace. Prereq: At least sophomore standing. Cross listed with ORBH 491.

### Learning Outcomes:

- To gain greater awareness of the strategic advantage of diversity to performance in organizations
- To enhance understanding of yourself as a leader in relationship to the diverse people around you in work settings.
- To gain a thorough understanding of systems.
- To develop an increased awareness about the positive side of difference.
- To enhance development and practice of competencies and skills of leadership for employee inclusion in a multicultural, globally connected workforce.

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<sup>4</sup> This is a new course.

<sup>5</sup> Cross listed with existing ORBH 491.

CWRU Action Form for Majors/Minors/Programs/Sequences/Degrees

(instructions on back)

Docket # \_\_\_\_\_

College/School:

CAS

Department:

English

PROPOSED:

- major
- minor
- program
- sequence
- degree

**APPROVED**

AcSCEP 2-15-13  
AcSCEP Excl. Comm 5-10-13  
AcSCEP 10-31-13

TITLE: Minor in Creative Writing

EFFECTIVE: Spring (semester)

2014 (year)

DESCRIPTION:

Minor in Creative Writing

Required: 15 credit hours

Students will take courses in 2 genres—poetry and fiction—and will be required to have an intro/intermediate sequence in one of those genres (eg., ENGL 213 and ENGL 303). See Appendix 3 for suggested genre tracks within the minor.

Requirements:

- 15 credit hours
- 3 in creative writing courses (at least 2 of these in one genre)
- 2 literature classes
- A creative writing portfolio

For the literature requirement, a student should take two 300-level classes; at least one of these classes should match their dominant genre (see Appendix 2 for lists of potential courses). Literature courses may be in other disciplines if crosslisted with English (e.g., World Lit). Up to six credits may count toward either the English major or another minor (but not both).

Managing tracks within the minor would be handled through advising, as would avoiding violations of the 42-hour rule.

The Portfolio

We require the assembly of a creative writing portfolio as the cornerstone of a student's academic and post-academic career. It would include

- A selection of the student's best creative work at CWRU.
- A critical introduction in which the student reflects on her/his progress through the CW minor, giving a critical context to the work, citing the primary and secondary texts and creative models that were important along the way.

Is this major/minor/program/sequence/degree:

- new
- modification
- replacement

If modification or replacement please elaborate:

Does this change in major/minor/program/sequence/degree involve other departments?

Yes  No

If yes, which departments?

Contact person/committee: Mary Grimm

SIGNATURES:

Department Curriculum Chair(s)/Program Directors: \_\_\_\_\_

*Jim Smith*

DATE  
4.29.13

Department Chair: \_\_\_\_\_

*Mary Con*

4/29/13

College/School Curriculum Committee Chair: \_\_\_\_\_

*A. Vrettos / J. Smith*

College/School Dean(s): \_\_\_\_\_

*C. Robin / C. ...*

~~UF Curriculum Committee Chair:~~ \_\_\_\_\_

*Excuse sent 10/31/13*

File copy sent to:

Registrar

Office of Undergraduate Studies/Graduate Studies

Other: \_\_\_\_\_

## Revised Proposal for a Creative Writing Minor

### Comments

4-29-13

We have revised our proposal in accordance with the suggestions made by the CEP and the Executive Committee.

As suggested, we have taken out not only any references to a track in Dramatic Writing, but also any mention of any focus in the minor that would accommodate Dramatic Writing, so as not to infringe on the Dramatic Writing track in the Theater Department's major. The only tracks for students now will be in Fiction and Poetry.

In regards to the following comments (as relayed to me by Cynthia Stilwell):

Further, the CSPSC was concerned that the proposal narrative made three claims that seemed incompatible:

- a) that the courses to make up the new minor were already popular and usually filled,
- b) that the point of the minor was to attract more students, and
- c) that the inauguration of the minor would require no new resources.

We revised the first page of the Program Proposal Narrative (changes are in bold). In regards to points a and b, I added bullet points to make more clear what groups of new students we were targeting. It's true that our creative writing courses are popular and enroll well; it's not only that we hope to attract more students to these courses, but that we hope to bring them into regular and structured affiliation with the English Department.

We also added language in the 3<sup>rd</sup> paragraph to address point c, discussing our new certification program for graduate students.

*Revised documents  
submitted 4-29-13*

## **Program Proposal Narrative for Minor in Creative Writing**

We feel that this new minor in creative writing will fill a need that has been felt in the English Department's offerings for a long time. One of the questions most commonly asked by prospective students who are interested in English is – “do you have a creative writing major or minor?” We've answered this question by showing students how it's possible to be an English major but specialize in creative writing courses, but more and more, we've felt that we'd like to have something more recognizable to offer these students who would prefer a more in-depth creative writing experience.

Creative writing courses are currently among the best-enrolled courses (they almost always fill up, with a number of students requesting overrides). The population of students who take these courses is relatively diverse; although any creative writing class is likely to be at least half English majors, there is also a sizable percentage who are not. Creative writing classes draw students from across the university—from computer science, engineering, physics, theater, history, anthropology, etc. **We believe that the creative writing minor will appeal to two populations of students:**

- **Prospective students, who have a strong interest in creative writing; a creative writing minor would be an inducement to enroll at CWRU for those who are interested in the humanities.**
- **Current students: those who don't want to take on the substantial demands of another major, but who would be attracted to the minor, with half the hours and the added inducement of specialization.**

Across the country, creative writing programs continue to proliferate and attract students, especially at the graduate level. (The Associated Writing Programs 2009/10 survey listed 145 MFA programs – the number has steadily climbed over the last decade).

We don't foresee any immediate costs necessary to set up the minor in creative writing. The classes that will be required for the minor are already regularly taught in the schedules of the English department's schedule. **We have three full-time faculty teaching creative writing courses (Professors Gridley, Grimm, and Umrigar). We do anticipate the necessity of offering creative writing courses more often and of needing additional sections. We expect that our new program of certification in teaching creative writing for graduate students will help to fill this need. We have this year (AY 2012/13) started a process of certification in teaching creative writing for our graduate students, managed by Director of Composition Kim Emmons and with workshops taught by the regular creative writing faculty, that will qualify them to teach the 200-level creative writing courses.**

The other additional cost (in time) is the supervision and evaluation of the portfolios: the current English creative writing faculty (Gridley, Grimm, and Umrigar) have agreed to divide this work among themselves. We hope and anticipate that funds might be found (through internal and external grants) for various programs that would support the minor – for instance, funds for speakers (beyond what the English department does now); or funds for a writers conference (we have secured grant funding for this, to take place in June, 2013). There is also a possibility of interesting collaborations with community institutions and events: e.g., the library systems (county and city); other programs granting degrees in creative writing (Cleveland State University, for example); the Anisfield Wolf Book Awards.

This proposal does not represent a change in the department priorities—rather it’s a recognition of a priority we’ve always had.

1. The proposed program is important to the English department because it clarifies a focus and interest that already exists. By creating a structure in which the creative writing experience can take place, that experience can be guided (in terms of more successful/effective combinations and requirements). In addition, students’ efforts and additional skill sets can be recognized.
2. Please see the attached table (**Appendix A**) taken from *The Director’s Handbook* of the Association of Writers and Writing Programs. In 1975, 24 institutions offered a creative writing minor; in 2012, 362 institutions offer such a program. To quote from the *Handbook*: “The vast majority of the 2,400 departments of English in North America offer classes in creative writing; the departments and programs accounted for above are only those that have shaped creative writing electives. . . . Among undergraduate students, classes in creative writing are among the most popular elective classes.” (Emphasis mine.)
3. As stated above, this minor is a recognition and affirmation of what already exists in an informal and elective sense. Faculty, staff, graduate students, space, university resources—all would continue to be used at the same rate and in the same way as when this selection of courses was an elective and an enrichment rather than a recognized course of study.
4. Possible collaborations with the Cleveland Institute of Art’s creative writing minor might allow access to funds to develop events specifically related to creative writing.
5. Not applicable as this is a minor course of study.
6. **A. Increase the “quality of undergraduates measured by test scores.”** As *The Director’s Handbook* notes, “the goal for an undergraduate program is mainly to develop a well-rounded student in the liberal arts and humanities, a student who develops a general expertise in literature, in critical reading, and in persuasive writing.” This “expertise” that is developed in critical reading and persuasive writing could not fail to increase the performance and abilities of undergraduates.  
**B. “Increased student satisfaction.”** *The Director’s Handbook* also notes that “classes in creative writing are among the most popular and over-subscribed electives among undergraduates”— enrollment in creative writing courses at CWRU reflect this trend as well— which surely indicates a need for self-examination and self-expression. Creating an outlet for that self-expression and helping to shape it would result in student satisfaction.  
**C. Collaboration across disciplines.** The creative writing classroom is one that invites students from many other majors who will funnel their growing expertise in other fields into their creative work thereby enriching the classroom experience.

7. **A. Collaboration/Partnership with Other Institutions.** The creative writing minor will foster a collaboration/partnership with the Cleveland Institute of Art's creative writing minor. There has already been an exchange of class listings, but future possibilities might involve co-sponsorship of outside readers and events, as well as a more symbiotic offering of classes each semester.  
**B. Culture, Creativity and Design.** In addition, a creative writing minor speaks directly to one of the university's key goals as outlined in CWRU's Strategic Plan: "The ideas that inspire us as individuals and connect us as a society arise from many disciplines. We will explore the nature of innovation, generating novel approaches that reframe our world view. Activities range from the study of culture, creativity, and design to the practical exercise of skills in these areas, especially in developing solutions to major issues." Learning how to express one's self through creative writing embodies that "practical exercise of skills" and a "reframe[ing] of our world view."
8. The creative writing minor will help to support the department of English in encouraging high-achieving students to add this discipline to their other major(s). In addition, it will reflect the flexible yet rigorous nature of the university which recognizes and responds to movements and trends in the larger culture, anticipates the associated needs of the undergraduate population, and fulfills them vigorously.
9. As stated above, this minor is a recognition and affirmation of what already exists in an informal and elective sense. Departmental priorities would be unchanged as they already accommodate the demand for creative writing classes. Resources are already in place to support this sequence of classes.

See also **Appendix B**, *The Director's Handbook*.

Appendix A.

## Numbers of Degree-Conferring Programs

IN CREATIVE WRITING 1975-2012

YE	A	BA/ BS	BA/ BEA	M	MF	PH	TOT
201	1	36	16	11	19	3	88
201	1	34	15	11	18	3	85
200	1	31	14	14	15	3	80
200	7	32	8	15	10	3	71
200	8	28	7	15	9	4	65
199	6	29	1	13	7	2	55
199	6	27	9	13	5	2	50
198	4	15	1	9	3	2	31
197	0	2	3	3	1	5	7

AWP's institutional membership has increased seven-fold since 1975. AWP's institutional membership includes 500 colleges and universities as well as 100 writers' conferences and centers. The numbers of degree-conferring creative writing programs are compiled from successive editions of *The AWP Official Guide to Writing Programs*, which became a free Web publication in 2007.

The table above includes member as well as non-member institutions. Most institutions offer two or more degree-conferring programs in creative writing.

The vast majority of the 2,400 departments of English in North America offer classes in creative writing; the departments and programs accounted for above are only those that have shaped creative writing electives into creative writing programs with, at least, minor tracks of study in creative writing and literature. Among undergraduate students, classes in creative writing are among the most popular elective classes.

**Appendix B.**

**<http://www.awpwriter.org/pdf/DirectorsHandbook2012.pdf>**

## **Appendix 1**

### **List of creative writing courses already in the bulletin**

ENGL 203	Intro to Creative Writing
ENGL 213	Intro to Fiction Writing
ENGL 214	Intro to Poetry Writing
ENGL 303	Intermediate Writing Workshop: Fiction
ENGL 304	Intermediate Writing Workshop: Poetry
ENGL 306	Intermediate Writing Workshop: Creative Nonfiction
ENGL 406	Advanced Creative Writing

## **Appendix 2**

### **List of courses that can fulfill the literature requirement**

ENGL 312	Chaucer
ENGL 320	Renaissance Literature
ENGL 323	Milton
ENGL 327	18 <sup>th</sup> -Century Literature
ENGL 330	Victorian Literature
ENGL 332	20 <sup>th</sup> -Century British Literature
ENGL 353	Major Writers
ENGL 356, 357, 358	American Literature
ENGL 363H	African-American Literature
ENGL 365E	Immigrant Experience
ENGL 365Q	Post-Colonial Literature
ENGL 366G	Minority Literature
ENGL 369	Children's Literature
ENGL 372	Studies in the Novel
ENGL 373	Studies in Poetry
ENGL 376	Studies in Genre

Also, any topics course with an appropriate focus.

## **Appendix 3**

### **Potential Suggested Genre Tracks**

#### **Poetry Track:**

ENGL 203 (Intro to Creative Writing) or 214 (Intro to Poetry Writing)

ENGL 304 (Intermediate Writing Workshop: Poetry)

ENGL 312 (Chaucer)

ENGL 373 (Studies in Poetry)

#### **Fiction Track:**

ENGL 203 (Intro to Creative Writing) or 213 (Intro to Fiction Writing)

ENGL 303 (Intermediate Writing Workshop: Fiction)

ENGL 330 (Victorian Literature)

ENGL 372 (Studies in the Novel)

# Undergraduate TOEFL Requirement Faculty Senate

Rick Bischoff  
Vice President for Enrollment Management  
December 17, 2013

# First Year International TOEFL Submissions Enrolled Students

	Fall 2011	Fall 2012	Fall 2013
Total International Deposits	77	93	147
Total Submitting TOEFL	71 (92%)	77 (83%)	131 (89%)
TOEFL >= 100 (% of TOEFLS)	20 (28%)	40 (52%)	90 (69%)
TOEFL between 90 and 99	35 (49%)	37 (48%)	31 (31%)
TOEFL between 80 and 89	16 (23%)	0	1

Reflects highest TOEFL Only and Citizenship Status at time of admission decision.

# International SAT Scores Enrolled Students

Year	Percent Submitting	Average
2009	50%	1251
2010	77%	1258
2011	78%	1246
2012	96%	1292
2013	96%	1337

# First Year GPA by Language Proficiency

	80-89	90-99	100+	All TOEFL	Domestic
Fall 2011	3.01	3.26	3.39	3.24	3.35
Fall 2012		3.36	3.22	3.28	3.36

Categorized by highest English proficiency standard: TOEFL, IELTS, SAT CR, ACT EN



CASE WESTERN RESERVE  
UNIVERSITY EST. 1826

## FACULTY SENATE

**December 17, 2013**

### FACULTY SENATE RESOLUTION REGARDING TOEFL SCORE REQUIREMENTS

WHEREAS, on February 16, 2011, the Faculty Senate approved an increase in the TOEFL score requirement for fall 2013 international undergraduate applicants (including transfer students) from 90 to 100; and

WHEREAS, on January 24, 2013 the Faculty Senate approved a recommendation from the Faculty Senate Committee on Undergraduate Education (FSCUE) to maintain the TOEFL score requirement of 90 and for the FSCUE Subcommittee on Admissions and Aid (the "Admissions Committee") to revisit this question annually;

WHEREAS, the Admissions Committee at its October 22, 2013 meeting recommended maintaining the TOEFL score requirement of 90 (the "Recommendation"); and

WHEREAS, at its December 3, 2013 meeting FSCUE endorsed the Recommendation; and

WHEREAS, on December 9, 2013, the Faculty Senate Executive Committee voted that the Recommendation be placed on the agenda for consideration by the Faculty Senate at its December 17, 2013 meeting;

NOW, THEREFORE, BE IT RESOLVED, THAT the TOEFL score requirement for international undergraduate applicants and transfer students shall remain at the current level of 90 and continuing efforts will be made to increase the TOEFL score without sacrificing international admission goals. The Admissions Committee will revisit this [question] annually and make a commitment to maintain the quality of the international student population at Case Western Reserve University.



# Interim Sexual Misconduct Policy Summary of Feedback from Faculty Senate Standing Committees

Sandra Russ  
Chair, Faculty Senate  
December 17, 2013

The Interim Sexual Misconduct Policy was reviewed by the following Faculty Senate standing committees:

- By-Laws Committee
- Committee on Graduate Studies
- Committee on Faculty Personnel
- Committee on Minority Affairs
- Committee on Undergraduate Education
- Committee on Women Faculty

1. If the report comes from someone other than the victim (witness or third-party report), should the victim have the right not to have it pursued?

2. What is the procedure for maintaining confidentiality for witnesses who may feel intimidated by coming forward?

3. Develop clear steps for protecting the sexual assault victim.

## 4. Concern about not having legal support at the hearing:

- Concern that policy overly restricts the right to legal counsel
- In hearings where possible sanctions include termination and expulsion, attorneys (from outside the university community) should be allowed to at least provide support and advice to the party at the hearing. (*Bylaws Committee*)
- Make clear in the policy those situations in which sanctions could be a possible result of the formal hearing. (*Bylaws Committee*)

5. Concern that individuals participating in the hearing would not know if the recording of the hearing could later be used in a legal proceeding

6. There was no mention of what would happen to individuals who lied during the hearing.

7. Regarding the composition of the hearing committee, it was important to have members of both genders on the committee.

It should be mandatory to have a student on the hearing panel if a student was involved.

8. What are the plans and procedures for educating the university community? What is the best way to communicate key details? Perhaps a “What to do When” fact sheet would be helpful.

Should the education and training process itself be spelled out in the policy statement?

Make the whole report more “user friendly” (See report of Bylaws Committee).

## 9. The Informal Process

Concern regarding the transparency of the informal process: notification, request to sign nondisclosure form, the current forms used (very legalize and confrontational), and lack of clarity in the process. (Personnel Committee)

## **Accepted Standards for Investigation of Harassment and Discrimination Complaints**

Susan S. Case  
October 24, 2013

I am doing a listing of what are the steps that are accepted practice for the investigation of harassment and discrimination complaints in the field. These are the standards I use in all my expert witness work when I am asked to examine the adequacy of the investigative process in sexual harassment, hostile work environment, sexual discrimination and sexual misconduct cases. These are compiled based on a request from the Faculty Senate Personnel Committee to assist this committee in providing feedback for the Interim Sexual harassment and Sexual Misconduct Policy. My comments are divided into sections as follows: (1) prior to the investigation; (2) the investigation; (3) making determination; and (4) overall reasonableness of investigation.

### **Prior to the Investigation**

1. There is a logical process to follow in conducting an investigation.

The investigation serves as the foundation for decisions made by organizations and for liability standards on prompt corrective action. Because of the prominent role the investigation plays in personnel matters, it is important that it is done correctly and that specially trained investigators are used who know how to appropriately conduct a fair and thorough investigation. In *Bennett v. Progressive Corporation* (N.D. New York, 2002) the court was critical of the organization's investigation because there were no specific procedures followed in conducting the investigation.

CWRU will have a stated set of procedures for sexual harassment and sexual misconduct. We need to make sure that it has very clear processes concerning how the investigation will be conducted including adequate due process.

2. An investigation needs to be handled promptly.

Although there is no clear-cut dividing line between gathering too much information and gathering too little, the investigation is not complete if it misses important information. In *Bennett v. Progressive Corporation* (N.D. New York, 2002) the court used the speed of the investigation as a strike against the organization since they felt that the case was too complex to be completed in an abbreviated period of time.

3. Appropriate investigators need to be selected.

Investigators need to be carefully selected, screened, and trained.

It is also important that the investigators selected have not had any relationship with any parties in the investigation.

Gender differences in perception of sexual and gender harassment should be considered when choosing an investigator. It is common practice for investigative teams to include members of both sexes. Accepted guidelines recommend having the team of investigators be both male and female in order to improve the quality of the investigation (Levy & Paludi, 1997; 2002). There are many reasons for this. It provides credibility for both parties in the case, makes the investigation appear more impartial, introduces different gender perspectives into the process, and allows for corroboration of facts and views during the process (Cole, 1997; Ehrlich, 1997; Reese & Lindenberg, 1999).

A mixed gender team is more knowledgeable about issues of diversity. They are more likely to understand the different impact that certain events may have on men and women. They understand the potential for different “truth telling” styles related to differences. They are more likely to be aware of personal and organizational biases regarding behavior by culturally different employees. And lastly, they better understand how diverse employees may approach a complaint or investigation, particularly when the investigator is significantly different from the complainant. For this reason female investigators usually interview female complainants who may be more comfortable with a female to talk about the complaint situation.

Effective investigations are designed so the investigator becomes an effective advocate for speedy resolution of the complaint, including suggesting remedies to the injured individual, which in some cases could be the accused since many anti harassment policy include that false and malicious complaints may be subject to appropriate corrective action. I don't remember if our proposed policy has any consequences for this. An investigation also is designed for correction of inappropriate behavior, prevention of inappropriate behavior, and the elimination or diminishing of employer liability.

4. The investigators need to be neutral in how they conduct their investigation and remain unbiased in the pursuit of the facts.

Good investigation is as much an art as it is a technical skill. An effective investigator is unbiased in a pursuit of the facts. Investigators need good “people skills” since they must develop rapport, intuitively unveil the truth, and guide others through an emotionally strenuous process.

The investigator must be able to approach the situation in a way that does not place him or her in the position of acting as an advocate for the complainant, the accused, or management. Neutrality must be maintained throughout the process, avoiding any judgment or conclusion until the investigation is complete.

It is important to ask open-ended questions about what may have happened without leading the witness and without foreclosing relevant information by prejudging the claimant, the accused, or relevant events.

Investigator's need to be aware of their own personal biases and cultural filters as well as how diverse cultural factors such as the ethnicity of those involved and their respective genders, generation, and other cultural influences may influence feelings, perceptions, behavior, and the lens through which the behavior experienced gets interpreted. This has potential for different "truth telling" styles that are related to cultural differences.

5. The investigators need to be trained and knowledgeable on the issues.

Investigators must stay current on discrimination law, labor contracts, and equal employment opportunity law. They need special training in how to interview victims of sexual harassment, as well as in-depth training to ensure the skills and knowledge are up to date concerning the latest court decisions on and advances in policy, training, and investigation. How much training in these issues did the investigator's have? It is not even clear which group of individuals were actually involved in conducting the investigation.

Investigators need to consider "diversity" factors when soliciting and interpreting evidence or they are likely to miscalculate it. People are born with personality tendencies, but form most of their values and behaviors through an array of diverse cultural influences. These include their gender, age, work experience, educational background, work experiences, occupation, organization, and management status. These layers of internal, external, and organizational factors influence the filters that greatly affect interpretation and reactions to our environment (Gardenswartz & Rowe, 1994).

The power of harassing behavior often lies in interpretation of the behavior as seen through individual filters. To understand why a person feels harassed, the investigator must understand everything about the situation, roles, and diverse filters within each person and how they interact. To understand the role diversity might play, the investigator should always ask the complainant about how she sees the behavior and its impact.

The investigators also need to be very aware of their own cultural filters and how gender, generation, and other cultural influences may affect their perceptions and behavior. They need to understand when their filters may help understand the impact of behavior and when the filters create blind spots that prevent seeing the situation objectively. Are our CWRU investigators trained to be aware of filters they use?

### **The Investigation**

6. Document review is necessary to corroborate/dispute the allegations.

Factual documentation can provide important corroboration and allow investigators to draw appropriate conclusions. These include:

*Personnel files.* Performance evaluation and reprimands provide a picture of how a claimants work performance has been judged and whether the performance has changed significantly after experiencing harassment. It also allows an examination of the how the alleged harasser has performed and if there are patterns of similar harassment or discriminatory behavior documented.

*Payroll records.* Show promotions, pay raises and leaves taken.

*Calendars.* Provide information to establish dates an event occurred. Computer calendars may show appointments and times when witnesses were together.

*Electronic communication.* In tracking an office romance, it would be important to check e-mails between the individual's to determine whether the relationship was consensual. Check to see if deleted e-mails and computer information can be recovered.

*Time sheets.* Tell when people worked, and if they worked on the same day and times. If a complainant alleges she had to take a lot of time off because of the harassment, time records will verify this.

*Organizational memos.* Information recorded in a memo provides times and dates.

*Supervisor files.* Supervisors often keep their own notes and records of information relating to their subordinates. Ask if files exist and check for relevant information.

*Diaries.* Many times a complainant will keep a diary of what occurred. Be sure to ask for a copy.

*Pictures.* If any events were recorded by pictures, ask for copies.

*Telephone records.* Telephone records indicate call patterns.

Implementing an investigation requires careful planning about what questions need to be asked, how to approach each witness, and what topics should be covered in the interviews.

Investigators need to gather all relevant organizational records, documents, and statistics that are available to corroborate or dispute the allegations. They need to request all the relevant directives on harassment and discrimination, misconduct

investigations, confidentiality and retaliation. They need to ask for specific policies including those about sexual harassment, equal opportunity policies and procedures, and the written guidelines for reporting and investigating allegations of misconduct including safeguards to prevent retaliation.

Personnel records should be reviewed prior to the interview process starting. Poor work performance that comes after good work performance could easily be a result of harassment. When work performance remains strong, harassment is much less likely to have occurred. Also needed are any records pertaining to prior complaints of sexual harassment and discrimination to determine how CWRU has responded in the past. This helps investigators see if there has been a pattern of job actions based on gender or retaliation by looking at others in similar situations and what job action was applied.

Although there is a need for confidentiality, everything should not be clothed in secrecy. There is a need for accountability in the system of investigation.

#### 7. An investigation needs proper planning.

Once the investigators are assigned, they should develop a plan for how the investigation should proceed. If well planned, the investigation plan would have included following activities, usually in the following order:

- Determine who should be part of the investigative team.
- Determine how communication between management and Human Resources will be managed.
- Gather the preliminary documents to assist in interviewing the complainant.
- Create a list of issues.
- Clarify the allegations and identify potential witnesses.
- Determine whether all or part of the investigation should be protected. Usually an employer wants to show that it acted reasonably by proving that it conducted an appropriate investigation.
- Determine who needs to be interviewed first, and who should follow. The usual order is the complainant, followed by the accused, then by other suggested witnesses that can support either side of the unfolding story.
- If the complaint comes from a person other than the alleged victim, the team needs to decide who is interviewed first. Both need to be interviewed.
- Good notes taken during interviews help show the thoroughness of the investigation.
- A question guide of potential questions is developed to assist with questioning witnesses during the investigation.
- Determine applicable policies and procedures.
- Determine what documents or other evidence should be collected, requesting these materials.
- Review the sexual harassment policy and procedures.

- Ensure the investigation is proceeding correctly. This includes ensuring an unbiased investigation and a reasonable deadline for completion.
- Assess issues of retaliation, safety, and workgroup functioning.
- Gather referral information for counseling and other services that might be appropriate.
- Develop a plan to diagnose what led to the harassment.
- Develop a written agreement requiring confidentiality guidelines and prohibitions against retaliation.
- Since some investigations of harassment may also involve a criminal charge, prepare a separate Garrity warning, similar to a Miranda warning in a criminal trial, which gives them “the right to remain silent...”
- Develop a consistent place for keeping investigative files separate from personnel files.
- Design a way to organize and present the evidence being collected effectively and persuasively.
- Decide what will be publicly reported.

What formal planning process will we have in place so that these steps will not be ignored?

8. A uniform standard of investigative guidelines needs to be followed.

Guidelines include the following activities:

- There should be a signed and dated form concerning confidentiality of each witness that states who needs to know what information and disclosure only to those people.
- There are prohibitions in place against retaliation with penalties spelled out for those who violate the policy. This should also be signed and dated by the witnesses.
- The timeline is usually no more than 30 days to do a thorough investigation, and if there are extenuating circumstances, then documentation of why it took longer.
- The complainant is notified of his or her rights.
- Uniform standards for documenting investigations of sexual harassment are followed.
- The standards for proof of harassment are “preponderance of evidence” which means that the investigators job is to determine if the allegations are more likely than not to be true.
- The standards for rape are “beyond a reasonable doubt” since this is a criminal charge. The investigation needs to ensure it does not have appearance of being slanted against the accused. Both parties need to know that the investigation will be a fair uncovering of what occurred.
- The accused is assured of impartiality and fairness during the investigation. An assumption cannot be made of “guilty as charged” by

the complainant without exploring “vindictiveness” or other motives of the complainant.

- Credibility determinations are made. The chain goes from statements to corroborated facts to finding credibility.
- Both the complainant and respondents are notified of the outcome.
- Any disciplinary action is swift and appropriate.
- Follow-up with the complainant is routine within 30-60 days of the conclusion of the investigation to determine if he or she has experienced any retaliation.

9. Investigators need to ask interview questions in ways that would determine harassment, discrimination, or retaliation without preconceived biases that such behavior actually exists.

The complainant interview is the most important component of the investigation, but often very difficult for an investigator to do well. Investigators must elicit detailed information about exactly what happened, how the complainant responded to the situation, and what the complainant was thinking and feeling at the time. The investigator needs to reconstruct the whole context of the experience.

When the claimant is interviewed, the investigator wants to ensure that the complainant describes the experience in her or his own words avoiding the implication that the complainant should have responded in a particular way. The investigator should never use “why” questions because it sounds like the investigator is questioning the behavior and motives of the complainant (Oppenheimer & Pratt, 2003). Open-ended questions are necessary to provide more than bare facts and let the person describe what he or she saw, heard, or experienced. It is important for the investigator to obtain clear and detailed descriptions of the physical behavior, the context in which it occurred, and the relationships of the people involved.

Open-ended questions include: “What did you do next?” “What words were used?” “What were you thinking at that point?” “What were you feeling when he did that?” “What gave you that impression?” These types of questions allow the complainant to talk about thoughts, feelings, and experiences during the incident. With respect to each event, the investigator needs to ask if this was an isolated event or a pattern of behavior.

In taking interview notes the investigators needed to write and document how the complainant reacted to the situation as well as what statements the claimant made to others in the aftermath of the reported incident(s). When did she tell someone? Who did she tell? Why did she decide to come forward? What was her motive? It is important to interview the first person the complainant told about the situation, as close to when it occurred as possible, because that person can provide unique information about the complainant’s initial demeanor, behavior and, statement. They also needed to ask about anyone who was told

about the alleged incidents(s) and other alleged harassment or gender discrimination so that these individuals could be interviewed.

Even with witness interviewing there is a proper order. First to be interviewed are “direct witnesses” who saw the event described. Then the “contemporaneous witnesses” are interviewed who did not see the event but who were spoken to about the event shortly after it occurred. The next groups of witnesses are those who can attest to similar behavior on part of one or the other party, followed by “character witnesses” who can attest to general character of the individuals, such as their reputation for truthfulness as it can shed light on the specific events.

A follow-up series of interviews should be conducted with the claimant and accused so that they can clarify any additional information learned from the witnesses. It is essential that these rebuttal interviews be conducted so that all parties are given the opportunity to respond to what other employees said in order to provide a full picture of the problem. Usual practice has the complainant interviewed as the last rebuttal witness so that she has an opportunity to clarify information learned from her alleged harasser.

10. Investigators need to document their findings of the investigation and the steps taken to obtain input.

There are standard practices in reasonable investigations that include records kept, what those records should contain, whether any privileges should apply, and how to write and disseminate a written report. Investigative records are discoverable during litigation or a public disclosure request, so it is important to retain materials relevant to the investigative findings. The absence of thorough records compromises the employer’s defense in the future. The investigative records should be kept separate from personnel files and should be kept very confidential.

It is common practice for investigators to keep detailed contemporaneous notes of what witnesses say and the questions they asked during the interview. The notes include information about body language, emotional affect, tone, and other observations of behavior that are important to notice. This rich nonverbal feedback can add to the information gathered by trained investigators and should be noted during the interview. The notes need to be created carefully of what witnesses say and the questions asked. They should not include conclusions or impressions. You can tell a lot about credibility and facts that need corroboration from a well-done interview.

The notes should be reviewed immediately after the interview to correct any factual errors. Final interview notes are often rewritten for clarity, with the original notes retained. This record forms the basis of an investigative file, which consists of outlining allegations and identifying potential sources of corroborative evidence. This forms part of the record.

Although written witness statements are not necessary in all cases, to ensure accuracy and completeness of the material being reported, it is accepted procedure to allow the people who have been interviewed to review what has been written and make any changes they want. Then each party signs the written statement written by the investigators with the changes. Although this may slow down the process, it ensures that if the investigator has misunderstood what was said in the interview, the party or witness has the opportunity to read it and change it. It also allows each to add other material they now remember. It prevents parties and witnesses from coming back later and saying that they were misunderstood and the investigator didn't get things right. What they sign indicates that the document accurately reflects their concerns and recollection of events.

### **Making Determination**

11. Allegations need corroboration in order to assess veracity.

There are many examples of corroboration that have been accepted by the courts (Salisbury & Dominick, 2004, p. 120). These include the following:

- The complainant told someone about the incidents at about the time they occurred and said that she did not welcome the behavior.
- The complainant took steps to avoid the accused by seeking a transfer, staying out of a particular work area, or passing up an overtime opportunity.
- Complainant's performance, attendance, attitude, and health deteriorated.
- Others experienced similar behavior from the accused. Were there others who could document inappropriate and offensive treatment?
- Others have witnessed all or part of the offensive behavior.
- Were there other individuals who witnessed the effects of the behavior on the complainant?
- The complainant documented significant incidents or events in a diary, journal, or work log.
- The complainant tape-recorded incidents.

12. Appropriate witnesses need to be interviewed who were essential to corroborate the complaint or to provide alternative views of the situation.

Both the complainant and the harasser need to be interviewed. Witnesses must also be interviewed. How were names suggested of people to be interviewed? What witnesses were selected to be able to provide direct evidence of the behavior of respective parties? How were their identities ascertained? Who made the decisions as to who was to be interviewed? Were people left off the list who could have refuted the complainant's allegations?

Who made the decisions as to who was to be interviewed? Were people left off the list who could have refuted the complainant's allegations?

### 13. Witness credibility determinations need to be made.

How were the witnesses questioned? Was the person "educated" about the charge? Was unnecessary information revealed in the course of questioning? Were open-ended questions asked about how the person was involved? Was the investigative plan improperly brought up? Were personal opinions of the interviewer shared? Were conclusions formed before the investigation was completed? Were opinions offered on the merits of the investigation? Were witnesses told, appropriately, that the investigation would be completed as quickly as possible and that the interviewer would interview any person who seems to have relevant information? Was advice offered on what the claimant or alleged harasser should have done during the incident? Did the interviewer distinguish between hearsay and first-hand knowledge by following up with questions that clarify whether the person was present for the event or conversation or simply heard about it from someone else? Were questions framed to assume guilt or innocence? Were words like "harassment" or "discrimination" used that imply guilt rather than words like "inappropriate", "Offensive", "disrespectful", or "intimidating" that provide information about behavior and are important to the conclusions to be drawn.

Employees conducting the investigation need to perform credibility determinations and reach a determination based on all the relevant facts. They must be able to evaluate relevant evidence and reach well-reasoned conclusions about allegations of harassment and other alleged inappropriate behavior. Rebuttal interviews to clarify new information gathered in interviews were never conducted.

Determining the credibility of witnesses and information requires considerable skill. Witnesses often resent being pulled into the investigation. The investigator needs to consider the quality of information obtained and be able to distinguish between hearsay and first hand knowledge with appropriate follow-up questions. The investigator needs to look for verbal evasion and deceptive verbal responses including indirect admissions and body language.

Evasion is a lie by omission or not directly answering the question posed. It can take the form of "I don't recall" instead of "yes" or "no," especially if the

witness had said “no” directly many times. It is always important to document attempts at verbal evasion by respondents because these instances are critical for evaluating the respondent’s credibility later.

Deception might occur in the following way. The investigator asks, “Has there ever been a situation when you said something like what is alleged?” Interviewee responds, “Not that I am aware of, not generally, no.” Or the interviewee might respond, “That’s not the way I talk to subordinates.” Sometimes an investigator can pick up the pattern of lying when very detailed answers suddenly become curt responses. This requires probing.

Determining witness credibility involves a host of factors to consider. First does the witness have opportunity and capacity to observe before, during, or after an event? Could they see what occurred or was their vision obscured? Could he hear accurately? Was he paying attention? What is known about his character? Prior inconsistent statements raise doubts about the truthfulness of what has been said. Certain relationships and circumstances may impair a witness’s impartiality.

Bias must be looked for in the self-serving nature of statements. When witnesses contradict each other, further investigation of the contradictory facts is necessary. It is also important to look at the inherent improbability of what is described. Is the testimony believable on its face? Does it make sense? What is the demeanor of the witness when giving his or her testimony? What are his carriage, manner, behavior, and appearance while testifying? Did the person seem to be telling the truth? Did he seem to be lying? Did the person have a motive to falsify the information? This involves subjectivity but is relevant to determining witness credibility.

The length of time that has passed between when alleged harassment or sexual misconduct is alleged to occur and when it was brought to the attention of the organization may be relevant when determining credibility.

An investigator should not automatically discount credibility because an individual has disciplinary problems or has been flirtatious or at one time been inappropriate with others. Thus information can be used as a factor to judge credibility and corroboration, but be careful of assumptions made.

Traditional gender views and age influence an individual’s definition of harassment as much as gender does. And those who hold traditional gender views of male-female relations are less likely to view many behaviors as sexual harassment. With education, counseling, and training any semblance of perceived inappropriate behavior could easily be eliminated.

Investigators need to know how to weigh particular facts. They need to make a determination about whether a contested fact happened. In doing this they must look for corroborations and contradictions. They need to determine if the facts are improbable or very likely. They need to determine whether witnesses,

claimants, or the accused had motives to lie to protect themselves. Did others have motives to lie? Were things exaggerated, misunderstood, or taken out of context? If such possibilities are not explored and weighted, the investigation risks misinterpreting evidence and allowing bias to affect it.

14. Evidence in favor of the accused needs to be given sufficient weight.

The standard of proof for a sexual harassment complaint is a “preponderance of evidence, not “beyond a reasonable doubt.” This means that the allegations are more likely than not to be true, and that it is more likely than not that the incidents happened largely the way the complainant described them. In harassment investigation the goal is to conduct a reasonable investigation and reach a reasonable conclusion. The focus is on the anti-harassment policy and determining whether the policy has been violated. Harassment law has a much lower burden of proof than does criminal law, which requires that criminal conduct be proven beyond a reasonable doubt.

15. The investigators need to prepare a written report of their findings.

A report is the formal documentation of the investigation. Standard procedure in an investigation is for those who do the investigation to write the final report of their findings. Although it is often reviewed by a neutral party within the organization, and may even be reviewed by a legal advisor for the organization, the determination of fact finding based on the interview process and document analysis is the job of the investigators. This report is a factual account of the allegations, interviews and findings of the investigation.

The report usually lists allegations, quoting relevant policy at issue, facts found, addressing each allegation separately, including corroboration, credibility issues resolved, and conclusions indicating whether the allegation is sustained, partly sustained, or inconclusive.

The report is important because it sets out the investigators’ findings in clear language and forces the investigators to think through the evidence and issues. The process of writing forces the investigators to take a hard look at their evidence. At this stage they can realize that more evidence is needed and go to a certain witness who was not asked a key question. The report forms the basis for the discipline of employees, and is a tool to identify training needs.

### **Overall Reasonableness of Investigation**

16. An investigation needs to be thorough for it to be reasonable.

An investigator organizes questions and follow up with witnesses determines whether or not an investigation is thorough. A thorough investigation needs to talk to the accused, the complainant(s), as well as people named by both the

alleged harasser and the complainant as witnesses who can provide relevant information concerning the charges being investigated. Aspects of the investigation that are listed in the previous part of the document need to be done.

17. The investigation needs to be impartial. See parts of document that address this.

18. The investigators need to be effective in investigating the complaint.

Effective investigators act as a detective, uncovering and discovering relevant information from reluctant witnesses. They act as a therapist, carefully listening without judgment. They act as a judge, determining what occurred and ferreting out the truth. They act as a reporter, accurately describing what is discovered. This involves sophisticated interpersonal communication that maintains trust while asking difficult and prying questions.

These communication skills required include listening accurately while simultaneously recording, processing, and analyzing information. New ways need to be tried to obtain and look at potentially relevant information. The goal is to uncover “the truth.”

19. The determination for sanctions of some type are often recommended by the investigators, but the determination of sanctions is separated from the investigation process.

MEMORANDUM

TO: Sandra Russ, Faculty Senate President

From: Dave Carney, Chair  
Faculty Senate Bylaws Committee

Re: Proposed Sexual Misconduct Policy

Date: December 5, 2013

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The Faculty Senate Bylaws Committee would like to make the following comments about the proposed Sexual Misconduct Policy. We begin by thanking the drafters of this policy for their hard work at a thankless task. The Department of Education's "Dear Colleague" letter imposed a number of mandates upon the University, and required the University to combine its existing Sexual Assault and Sexual Harassment policies. That forced combination caused most of our concerns, and we recognize that there are no perfect solutions to some of these concerns. With that said, however, we wish to note three basic areas of concern:

1. First, the draft policy is too long and hard to understand. As a result, it sometimes fails to sufficiently protect those it should, fails to clearly state the University's rules for sexual misconduct, and those applying or consulting the policy may find it hard to interpret or use.
2. Second, the policy does not do as much as it could to protect the victims of sexual assault. The policy does not clearly authorize immediate action to remove victims from dangerous situations, does not clearly communicate how first responders can best protect victims, and does not include procedural safeguards to protect victims of sexual assault, including "rape shield" rules like those adopted in all 50 states.
3. Third, although the policy provides the minimum level of due process required, we believe those accused of the most serious offences under the policy should have the right to counsel to assist in their defense. Similar protections can and should be provided to complainants in such cases. The existing policy allows well-connected and sophisticated respondents to use an attorney (such as a member of the law faculty) as their "advisor," while barring the less well-connected from using an off-campus attorney. We feel the right to have an attorney present at hearings which could result in firing or expulsion is an important procedural safeguard.

Each of these concerns is explained in more depth below.

**1. THE POLICY IS TOO LONG AND HARD TO UNDERSTAND.**

The federal government has required the University to combine its sexual harassment and sexual assault policies. But as a result, the draft "sexual misconduct" policy is 25 single-spaced

pages long, full of procedural rules, definitions of prohibited conduct, possible sanctions, and a series of other provisions. But the resulting mass of (admittedly necessary) legalese is not an easy read. A non-lawyer reading this policy may have difficulty finding all of the relevant provisions.

Ideally, the policy should be more user-friendly, providing rules prohibiting certain conduct, and clearly communicating those rules to everyone. The policy provides carefully-drafted definitions of prohibited conduct, but the length and complexity of these definitions makes the overall force of the policy less clear. We think the policy could benefit from clearer statements and better organization, and offer the following specific suggestions:

- a. The policy would benefit from a clearer statement of the overall goals and standards of the University – a statement that no non-consensual sexual conduct of any sort is permitted, for example. The policy contains such statements in a number of places, but re-writing to make such statements more prominent might make the organization easier to grasp.
- b. The policy should more prominently discuss the role of intoxicants in sexual misconduct, and state more clearly and prominently that those who are incapacitated cannot consent to sexual activity. The policy communicates that those “incapacitated because of voluntary intoxication” are not capable of consent, but this is listed as example “f.” under the third paragraph under Consent (Policy, *Consent*, p. 6). Given the prevalence of alcohol in most campus sexual misconduct, this example should be given more prominence or moved to the front of the text.
- c. A better table of contents, index, and page numbers would also make the policy easier to navigate.
- d. Finally, some of the definitions are incomplete or partial adoptions of criminal statutes. The Policy defines “Forced Sexual Intercourse” as “sexual intercourse (oral, anal or vaginal) “with any object or body part” “by a person upon another person.” But the policy does not define what “sexual intercourse” means – this is significant, because the criminal law generally requires the penetration of the mouth, anus, or vagina by a sexual organ in order to constitute “intercourse,” while the “any object or body part” language refers to more modern definitions of rape, which focus on non-consensual sexual touching. It is not clear whether the University intended to make a choice between old-fashioned and modern rape definitions here, but the ambiguity is troubling. Similarly, the definition of “non-consensual sexual contact” contains some differences from the statutory definitions of gross sexual imposition.<sup>1</sup>

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<sup>1</sup> We recognize that we are suggesting both (a) that the policy is too long and contains too many definitions and (b) that the definitions are not precise and detailed enough.

The Federal Government's mandate that sexual assault and sexual harassment policies be combined causes another difficulty in tone, especially when investigative procedures are discussed. "Sexual misconduct" covers a wide range of potential conduct, ranging from insensitive comments to criminal sexual assaults. As a result, the procedures and punishments proscribed by a sexual misconduct policy must be flexible, to allow appropriate responses to everything from an inappropriate joke implying women are bad at math to a rape or other sexual assault. Thus, the University's existing sexual harassment policy allows for both an informal track involving "awareness, education, and/or facilitated discussion" and a formal track involving discipline, hearings, and potential sanctions. (Policy, p. 15).

But the Policy does not **guarantee** that complaints of rape will be assigned to the formal track. Instead, ANY claim of sexual misconduct, from the least to the most serious, is to be investigated and then assigned to either the formal process OR the informal process. (Policy, *Role of the Designated Reporting Representative and/or Sexual Misconduct Investigator(s)*, p. 15). Perhaps recognizing that this provision fails to take claims of rape seriously enough, the "informal process" discussion on page 15 states that "**NORMALLY**, the informal process will not be used to resolve allegations of ... Forced Sexual Intercourse." (Policy, "*Informal Process*," p. 15 (emphasis added by author of this memo)).

This "clarification" is itself unclear: Why is "normally" an appropriate word choice here? Because in "abnormal" rapes, the informal facilitation process may be appropriate? We question the need for the conditional language "normally" here – if a rape occurred, it should not be addressed through "facilitated discussion." Any language leaving open the possibility that an instance of rape will be resolved by "education and facilitated discussion" trivializes the offense and sends a message that the University fails to take such complaints seriously.

A similar unfortunate ambiguity covers the penalties for sexual misconduct, which are listed on page 20 of the policy. Among the University-approved punishments for "sexual misconduct" are "a. Apology; b. Participation in educational ... or management training; and c. "written warning." While these sanctions might be appropriate for certain types of sexual harassment or insensitive behavior, the policy does not clearly state that "apology" is not an appropriate remedy for rape.

The policy should be amended to clearly communicate that rape is taken seriously, and that serious accusations will be treated seriously by the University. The language of the current policy fails to accomplish that goal.

Finally, the policy will be consulted by individuals with widely-varied levels of training and familiarity with University processes. The policy might be consulted by any of the following:

- (i) victims checking to see if they can report conduct;
- (ii) a co-worker wondering if they should or must report;
- (iii) students;
- (iv) research or teaching assistants working in temporary appointments;
- (v) law enforcement personnel or campus HR and legal staff;
- (vi) student housing officers;
- (vii) faculty and/or students selected to serve as hearing officers for a formal hearing.

This wide range of potential audiences is one argument for two or more policies – trying to draft one document which can be all things to all persons is a daunting task, and clarity sometimes suffers as a result. We urge that the drafters consider making the policy clearer, easier to navigate, and easier to understand, and that the policy be revised to communicate that the University takes claims of rape seriously.

## **2. THE POLICY FAILS TO PROTECT VICTIMS OF SEXUAL ASSAULT**

Our second broad set of concerns is that the policy does not sufficiently protect sexual assault victims. Partly, this is a function of the breadth of the policy and its lack of clarity, but the policy also fails to lay out clear and easy to follow rules for first responders. Instead, the policy focuses too much on the investigative aspects of a report of sexual misconduct. This is appropriate in cases where the complaint is sexual harassment, or where there is no ongoing threat to the physical or emotional health of the victim, but it inappropriate in cases of sexual assault.

Sexual assault is different. Perpetrators of sexual assault often take advantage of individuals who are likely to be perceived as less credible, whether that lack of credibility is due

to lack of power, intoxication, immaturity, or some other perceived vulnerability. Disparities in power are common in many cases of sexual misconduct, and such disparities are one reason organizations need clear sexual harassment policies.

For this reason, those responding to sexual assaults must be trained and prepared to take quick and decisive action to protect victims both from ongoing dangers to their health and from intimidation and harassment. There are several examples of recent high profile sexual assaults in the educational context which provide warning examples. From Florida State to Steubenville, sexual assaults in educational settings often involve victim blaming, retaliation against the victim by peers or friends of the accused, and a failure by authority to take prompt action to stop such harassment. This all-to-common dynamic is one of the reasons why the Department of Education is now requiring colleges to treat sexual assault as a form of sexual harassment.

But our policy does not communicate clearly enough that any retaliation by any person against a complainant cannot be tolerated, and the policy also does not spell out the types of remedies that the University and the law can provide to victims on an imminent or emergency basis. Such remedies can include moving students out of a dorm where the assault occurred, making sure that non-witness peer groups understand that harassment of a victim may itself constitute sexual harassment, ensuring that medical treatment is provided to victims, and making sure that victims know that they may be entitled to a domestic violence protective order. Many instances of sexual assault involve former or current romantic partners, and emergency shelters and temporary restraining orders are tools which can be used to protect victims and make them more safe. The draft policy fails to focus first on the protection of the victim.

Our university currently does an excellent job of protecting students, ensuring appropriate treatment, and coordinating with law enforcement when the victim reports problems to the right individuals. But the draft sexual misconduct policy does not focus on victim prevention, and does not list available resources which exist to protect victims. As a result, the extent to which a victim is protected and provided with appropriate resources many depend on who receives the complaint, and whether that person is aware that a resource or protection exists. A clearer guide for first responders is needed.

The policy should be amended to more clearly guide first responders, identify University and other resources which can assist victims, and help first responders to protect victims of sexual misconduct. The policy should clarify that claims of sexual assault or other serious sexual

misconduct obligate the first responder to act to protect the victim, ensure the victim's safety, and preserve evidence of any possible assault. The "interim University Actions" section of the policy on page 14 allows "interim actions," but the provision is focused on providing notice to the accused and a copy of the relevant policy, and only secondarily concerned with the safety and protection of victims.<sup>2</sup>

The policy should be revised to reflect a greater awareness of victim dynamics in sexual assault cases. Although written with a prosecutorial focus, this policy drafted by the New Hampshire Department of Justice might help provide a pattern: <http://doj.nh.gov/criminal/victim-assistance/documents/sexual-assault-protocol.pdf>.

In addition, we believe that the hearing procedures in the policy should clarify that victims have the protections they would otherwise have in court. The policy currently (and wisely) precludes cross-examination by the alleged perpetrator of an assault, but allows the respondent to suggest questions to the panel. The policy<sup>3</sup> also states that victims should not be questioned about their past sexual conduct "unless relevant," but provides no guidance as to when such conduct is "relevant." Under the rape shield laws passed by all 50 states, such questions are generally not "relevant" outside certain narrowly crafted exceptions. At a minimum, panel members should be trained and prepared with awareness that certain subjects (such as an alleged victim's alleged sexual promiscuity) are not appropriate questions. All 50 states currently limit victim blaming or "slut shaming" in cases of sexual assault via a rape shield law. A listing of those laws can be found at the link below,<sup>4</sup> but the gist of them is that rape is not excused because the perpetrator thought the victim was "asking for it." University officials and hearing officers should be formally trained on the protections accorded by rape shield statutes. And the policy should be rewritten to ensure that no victim of sexual misconduct at this University has less protection in an administrative hearing than they would in open court.

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<sup>2</sup> There is an "Emergency Room Examination" provision on page 22, after the formal hearing requirements, but no reference to this provision on page 14, where it might be consulted by a first responder. Again, better training and organization is needed.

<sup>3</sup> Policy, *Rights of the Complainant and Respondent*, p. 15.

<sup>4</sup> <http://www.ndaa.org/pdf/NCPCA%20Rape%20Shield%202011.pdf>

### 3. THE POLICY UNFAIRLY LIMITS THE RIGHT TO COUNSEL

Finally, we are concerned that the draft policy overly restricts the right to counsel. There is no legal requirement that the University allow attorneys to participate in administrative hearings like those contemplated by this policy. And the university's established policies bar attorneys who are not otherwise "members of the University community"<sup>5</sup> from participating in grievance hearings or administrative disciplinary hearings. While attorneys can complicate a hearing, we believe that the protections of an attorney's advice may be worth it. At the upper end of sanctions contemplated by this policy, an adverse finding at the disciplinary hearing could cause expulsion from school and loss of scholarship for students, and termination for cause for University employees accused of serious sexual misconduct.

When the administrative hearing involves serious potential sanctions, we feel that it is appropriate to allow anyone subject to such sanctions to have access to the advice of counsel. This need not include the right to actually participate in the hearing or to question witnesses, but should include the right to give parties advice while the hearing is ongoing.

Finally, as a practical matter, attorneys participate in formal hearings today. Faculty members at the law school have served as hearing officers, and also served as "support persons" under the existing procedure. Thus, those who are well-connected enough to know an attorney who is a member of the "University community" have access to legal counsel; those who lack the connections, wealth or experience needed to find such a "support person" do not. This is neither fair nor equitable.

As such, if the potential sanction involved in an administrative hearing is sufficiently serious to warrant the participation of an attorney, we believe that all parties should be informed that they have the right to have an attorney present in the hearing and giving them advice.

As a related note, the policy does not currently require the University to designate a possible range of sanctions – every offense can be dealt with the entire range of sanctions from apology to termination with cause or expulsion. While this range of sanctions ensures flexibility, it fails to give adequate notice of how seriously the University treats the charge. As a result, the policy should be amended to ensure that serious charges are treated appropriately by all concerned.

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<sup>5</sup> Policy, *Pre-Hearing Procedure*, pp. 18-19, ¶ 3 "Support Persons".

## CONCLUSION

Again, we appreciate the drafters attempt to create a coherent sexual misconduct policy, and recognize the difficulty and the complexity of that assignment. However, we believe the policy would be improved if the changes described here were implemented, including:

1. A more user-friendly format, indexed and made easier to read, with more guidelines and decision trees to help those implementing the policy understand how it fits together;
2. A more-victim focused and proactive set of instructions to first responders and hearing officers, ensuring that victims are kept safe and treated with appropriate respect;
3. Changes to ensure that all participants know that they have the right to bring an attorney into the hearing as a “support person” if the charges against them involve the highest level of possible sanctions (termination or expulsion). In addition, the policy should be revised to make it clear when such sanctions are a possible result of a formal hearing – the current policy lacks this basic notice provision.

Respectfully submitted on behalf of the Faculty Senate Bylaws Committee,

David Carney, chair.

Cc: Faculty Senate Bylaws Committee  
Rebecca Weiss

## Summary of Feedback on Interim Sexual Misconduct Policy

Prepared by Sandra Russ, Chair, Faculty Senate, Dec. 6, 2013

We received very thoughtful feedback from the Personnel Committee, Graduate Studies Committee, Minority Affairs Committee, Women Faculty Committee, FSCUE, and the Bylaws Committee. Because of the level of detail in their report, the Bylaws Committee report is in a separate document.

The following is a summary of the points raised.

1. What are the plans and procedures for educating the university community? What is the best way to communicate key details? Perhaps, a “What to do When” fact sheet would be helpful.

Should the education and training process itself be spelled out in the policy statement?

Make the whole report more “user friendly” (See report of Bylaws Committee).

2. What is the procedure for maintaining confidentiality for witnesses who may feel intimidated by coming forward?
3. If the report comes from someone other than the victim (witness or third-hand report), should the victim have the right not to have it pursued?
4. Develop clear steps for protecting the sexual assault victim.

“ ... those responding to sexual assaults must be trained and prepared to take quick and decisive action to protect victims both from ongoing dangers to their health and from intimidation and harassment. There are several examples of recent high profile sexual assaults in the educational context which provide warning examples. From Florida State to Steubenville, sexual assaults in educational settings often involve victim blaming, retaliation against the victim by peers or friends of the accused, and a failure by authority to take prompt action to stop such harassment. This all-to-common dynamic is one of the reasons why the Department of Education is now requiring colleges to treat sexual assault as a form of sexual harassment.”

But our policy does not communicate clearly enough that any retaliation by any person against a complainant cannot be tolerated, and the policy also does not spell out the types of remedies that the University and the law can provide to victims on an imminent or emergency basis. Such remedies can include moving students out of a dorm where the assault occurred, making sure that non-witness peer groups understand that harassment of a victim may itself constitute sexual harassment, ensuring that medical treatment is provided to victims, and making sure that victims know that they may be entitled to a

domestic violence protective order. Many instances of sexual assault involve former or current romantic partners, and emergency shelters and temporary restraining orders are tools which can be used to protect victims and make them more safe. The draft policy fails to focus first on the protection of the victim.

Our university currently does an excellent job of protecting students, ensuring appropriate treatment, and coordinating with law enforcement when the victim reports problems to the right individuals. But the draft sexual misconduct policy does not focus on victim prevention, and does not list available resources which exist to protect victims. As a result, the extent to which a victim is protected and provided with appropriate resources many depend on who receives the complaint, and whether that person is aware that a resource or protection exists. A clearer guide for first responders is needed.

The policy should be amended to more clearly guide first responders, identify University and other resources which can assist victims, and help first responders to protect victims of sexual misconduct. The policy should clarify that claims of sexual assault or other serious sexual misconduct obligate the first responder to act to protect the victim, ensure the victim's safety, and preserve evidence of any possible assault. The "interim University Actions" section of the policy on page 14 allows "interim actions," but the provision is focused on providing notice to the accused and a copy of the relevant policy, and only secondarily concerned with the safety and protection of victims." (Bylaws Committee)

5. Concern about not having legal support at the hearing. There should be "changes to ensure that all participants know that they have the right to bring an attorney into the hearing as a "support person" if the charges against them involve the highest level of possible sanctions (termination or expulsion). In addition, the policy should be revised to make it clear when such sanctions are a possible result of a formal hearing – the current policy lacks this basic notice provision." (Bylaws Committee)

Also, regarding representation - The "Dear Colleague" letter only requires that if one side has the ability to bring counsel so should the other. The Personnel Committee was concerned that offering counsel is not the same as being able to secure/afford counsel. An offer to allow a student to seek legal counsel if a faculty member is also able to do so, may be meaningless if it is difficult to secure or afford counsel. There was a concern that students may be disadvantaged if this option was given. We cannot assume that parents would be able to assist...or even be aware of the situation. (Personnel Committee)

6. Concern that individuals participating in the hearing would not know if the recording of the hearing could later be used in a legal proceeding. If this answer is "it depends" then each party needs to sign a form that they understand that confidentiality cannot be guaranteed and that what they say in the proceedings could be used against them in a future proceeding. If the answer is "no, these proceedings remain confidential" or "yes, if legal action is sought by either party at a later time, the recording will be turned over" then this needs to be clear. This should be a signed form to indicate that each individual

(anyone that is present...not just the two most involved) signs. (Personnel Comm.)

7. Concern regarding a lack of stated consequences for individuals that provided false statements during the hearing. There was no mention of what would happen to individuals who lied during the hearing. What should individuals (who are present but not allowed to intervene or speak) do? In the past, these issues have been referred to outside committees but perhaps this could be addressed in the document. (Personnel Committee)
8. Regarding the composition of the hearing committee, it was important to have members of both genders on the committee.
9. It was mandatory to have a student on the hearing panel if a student was involved. The current language allowing for this to not occur during summer breaks or exams is hard to justify. There are students present on campus all year and we can work around exams if needed.
10. Have a 1 page executive summary at the beginning of the policy.
11. Publish the members of the board...not individual hearing panels, but a general list of who has volunteered and trained for these panels. This would also help with transparency regarding the process - what school are represented, what is the training that takes place....and what to do if you are interested in being part of this process.
12. One issue that arose in the Personnel Committee upon review of the sexual misconduct policy concerned the need to review policies that provided more detail regarding the Human Resources Consensual Relations Policy. "It is quite clear in the language of the sexual misconduct policy that consent may not be possible given an imbalance of power in the relationship/status of the individuals. The problem that was identified is in the management of such a relationship/situation. According to the website, the Human Resources policy regarding the management plan describes: a "management plan may include, for example, changing the supervisor, having a different faculty member evaluate academic or job-related work, or having the student change courses and may require cessation of either the personal or supervisory professional relationship." When discussed this was read to only address issues of direct grading for a current course or an immediate supervisory relationship. This seemed inadequate given the language identifying sexual relationships between faculty and students (and other similar relationships) as a basic violation of professional ethics when one party has professional responsibilities for the other's academic or professional future. We would recommend a more robust description of the goals of a management plan be outlined and the relevant policies be reviewed."

Minor issues (wording)

p. 5- under unwelcome behavior- what does "it" refer to- victim or perpetrator

p. 7- last paragraph- most resources fall in the middle... **of what**

Introductory paragraph (change in bold)

*Case Western Reserve University is a community based upon trust and respect for its constituent members. Sexual misconduct is a violation of that trust and respect and will not be tolerated. Members of the Case Western Reserve community, guests and visitors have the right to be free from sexual misconduct. All members of the community are expected to conduct themselves in a manner that does not infringe upon the rights of others. The purpose of this policy is to define sexual misconduct and the procedures the university uses to investigate and take appropriate action on complaints of sexual misconduct. When complaints are reported, the university will act to end **any discrimination found to have taken place**, prevent its recurrence, and remedy the effects on both individuals and the university community. This policy and the accompanying procedures shall serve as the only internal university forum of resolution and appeal of sexual misconduct complaints.*