

MEETING OF THE COUNCIL ON STUDENT AFFAIRS
Regents' Conference Room
655 Research Parkway, Suite 200

Dr. William Wayne, Chair, Presiding
Via Zoom Video
June 11, 2020
10:00 a.m.

MINUTES

1. Welcome and Introductions – William Wayne

The meeting was called to order at 10:00 a.m.

2. Approval of March 12, 2020 Minutes – William Wayne

Upon motion duly made and seconded, the minutes were approved as written.

INFORMATION OF INTEREST TO THE COUNCIL

3. Thinking 30 and Beyond: Reimagining the First-Year Student Experience –

Dr. Jason Johnson, Assistant Vice President, Student Success Initiatives, Langston University
Joshua Busby, Dean of Students/Chief Student Affairs Officer, Langston University

Joshua mentioned Langston University has been thriving since 1897 with over 2,000 students currently at four campuses. Some student challenges have been low retention rates, low credit hours attempted, lack of understanding and completing FAFSA. He said many are first-generation, first-time students who have experienced a disjointed process and siloed communications. The university is working through these challenges.

Jason advised the council a Langston University team attended statewide meetings on developing co-requisite courses in Math and English. Langston launched their Complete College America 15 to Finish pilot in the spring of 2018 through their University College advisors. Jason said some pushback was received from seasoned advisors that thought students were not capable of handling more than 12 credit hours. They began to see positive responses and then added a branded campaign with flyers, digital displays, handbills and workshops in the Fall of 2018. The full implementation began in the Fall of 2019 where all students are enrolled in at least 15 credit hours.

A new initiative was started with their Maymester. Students were offered an opportunity for credit recovery. Courses were selected based on the Fall and Spring DFW reports. Freshmen were the targeted audience, those who had received an F, W, or AW in select general education courses. Upper classmen who had missed these classes their freshmen and sophomore years were also taking the classes to stay on track to graduate in four years. Langston also redesigned their summer enrollment process and created a second-year experience.

Joshua spoke about Lion Camp, which is Langston's new student orientation. It is a two-week program where students are allowed to move in and enroll in either Introduction to Speech, Information Processing or Academic Achievement and Personal Social Development and earn two to three credit hours before the Fall semester. One event held was a scavenger hunt in an effort to get the students acclimated to the campus.

Langston has had success with their 15 to Finish program, Maymester and Lion Camp.

Lance Newbold (RSC) asked if freshman are required to live on campus. Joshua said Langston has a two-year campus residency requirement.

4. Title IX Update –

Dr. Michael Davis, J.D., Assistant Professor/Special Assistant to the President for Compliance, Southeastern Oklahoma State University

Brandee Hancock, Associate General Counsel at Board of Regents for the Oklahoma Agricultural and Mechanical Colleges

Mackenzie Murphy-Wilfong, Esq., General Counsel, Tulsa Community College

Mackenzie advised the council the Final Rule is incredibly long and complicated. The Office for Civil Rights will start enforcement on August 14, 2020, with no grace period. She said nationwide injunctions are possible but not to count on it. They may have limited scope (only impact a portion of the regulations) and may not have a long duration.

Brandee mentioned institutional responsibility is to show, at a minimum, that there is not deliberate indifference when the institution has actual knowledge of sexual harassment. An institution violates Title IX when its response to sexual harassment is clearly unreasonable in light of the known circumstances. An institution's mandatory reporter may be only a handful of people who have the authority to institute corrective measures on behalf of the recipient, such as the Title IX coordinator. Supervisors or student advisors may also be designated. If an institution receives a report it must offer supportive measures (previously termed interim measures) and provide an explanation of the formal complaint process. If an institution receives a formal complaint it must investigate and provide a grievance process that is consistent with the regulations.

Mackenzie explained dismissal of formal complaints, which is new within the regulations. There are mandatory dismissals where formal complaints must be dismissed from the Title IX process. There are also permissive dismissals where the formal complaint may be dismissed. An institution must dismiss a formal complaint if what is alleged in the complaint, even if it was proved, would not constitute sexual harassment. There is now a global definition for sexual harassment. A formal complaint must be dismissed also if it did not occur in an institution's program/activity, or locations, events, or circumstances in which an institution exercises substantial control over both the respondent and the context in which the sexual harassment occurs. It must be dismissed if it did not occur against a person in the United States (study abroad).

Mackenzie also explained formal complaints that may be dismissed from the Title IX process:

1. If complainant requests to withdraw their complaint;
2. If respondent is no longer enrolled or employed at the institution;
3. When specific circumstances prevent gathering evidence sufficient to reach a determination.

Mike advised the council that temporary or interim suspensions are now called emergency removals. The Final Rule imposes a high threshold to justify the emergency removal of a student or employee accused of misconduct from an education program. An institution is to conduct a prompt individualized safety and risk analysis that determines there is an “immediate threat” to the “physical health or safety” of any student or other individual and that this arises from sexual harassment. Mike suggested Title IX institutional policy language be changed to “emergency removal” and to follow the checklist of individualized risk analysis, make sure there is an immediate threat, define the immediate threat and only implement in cases where there is only a physical health or safety threat to another student or other participant in that educational program or activity. The institution is to consider the appropriateness of supportive measures in lieu of an emergency removal and provide the respondent with notice and an “immediate” opportunity to challenge the emergency removal.

Mackenzie mentioned prehearing evidence review. She said written Title IX investigative reports must now be created. Before the investigator issues their report, the parties must have at least 10 days to review any relevant information directly related to the allegations raised in a formal complaint gathered by the investigators, including both inculpatory and exculpatory evidence. At the end of that ten-day period, the parties have the right to submit a written response, which the investigator will consider before completing their investigative report. The institution must create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing or other time of determination regarding responsibility, send to each party and the party’s advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response. The same standard of evidence is required for students or employees. She stressed that policy language may need modification.

Brandee said there will now be a live hearing with cross-examination by an advisor. The institution must provide an advisor without fee or charge to any party without an advisor in order to conduct cross-examination. The individual (parrot) asks the question for the person they are representing during a hearing. A decision maker may not draw any inference from a party’s refusal to participate in cross-examination. If a party is not subject to cross-examination, then:

- No reliance on their statement in determining responsibility.
- No inference as to responsibility.

Live hearings may be conducted with all parties present in the same location or virtually, as long as participants can simultaneously see and hear each other. A recording or transcript must be created and made available for the parties to review and inspect. The provision of an advisor and rules must be set regarding decorum for that individual. Decisions are made regarding engaging external resources to serve as investigators or decision makers or providing significant training for current staff who will need to understand relevance

standards, technology, and rape shield considerations. Decision makers must rule on relevance and disallow questions that violate rape shield laws.

Mike discussed the new training requirements for Investigators, Title IX Coordinators, and Decision Makers:

- Definition of sexual harassment.
- Scope of the institution's educational program or activity.
- How to conduct an investigation and grievance process.
- How to serve impartially as either an investigator or decision making and not have a bias
- How to avoid conflicts of interest that could create bias.
- Specific training on the technology that would be used to substitute for an in-person face-to-face live hearing.
- Training must not rely on sex stereotypes.
- Must be impartial investigations and adjudications of formal complaints of sexual harassment, publicly available on the school's website and maintained by the school for at least seven years.

Mike posed the question, what do we do if our training is provided by a third-party vendor that has copyright materials? He said the U.S. Department of Education suggests institutions find a vendor that will allow the material to be published. He also said institutions must post all of the training material.

He mentioned when revising Title IX policies to keep in mind that all rules might not be found in the new regulations. The Violence Against Women Act amendments to Clery published in 2014 are still in effect. The Clery Center has great information and free resources.

Mackenzie advised this process applies to employees as well and is a huge issue because the law does not read the same. Title VII and Title IX are not the same thing.

- Title VII defines sexual harassment as “severe or pervasive” not “severe and pervasive.”
- Title VII “knew or should have known” versus “actual knowledge.”
- Title IX you now “must dismiss” a formal complaint if conduct is not against a person in the United States. Title VII applies to United States citizens working abroad.
- “The recipient must keep confidential the identity of any individual who has been reported to be the perpetrator of sex discrimination, any respondent, except as may be permitted by FERPA or as required by law.
- NSF required notifications in grant terms and conditions.

Mackenzie emphasized that Human Resource departments must be heavily involved to implement the process.

Brandee advised the council virtual training sessions will be held in July at a minimal cost. More information on these sessions will be emailed to the COSA listserv.

Questions & Answers:

Douglas Hallenbeck (OSU) – In terms of the advisor for the individual parroting the questions, is the idea that the other advisor would parrot the answers? Brandee said the other advisor would parrot the questions for that party. Each party would answer the respective questions. The advisors would just ask the questions.

Douglas also asked - Is there any thought or idea of added personal liability for the advisors based on the results of the hearing? Brandee said if it is within the scope of their employment, particularly internal to the institution, she does not see it increasing their liability in anyway. The advisor needs to be very clear of their role and not to step beyond that. Mackenzie added that an advisor does the cross-examination and does not really involve themselves in other ways in the hearing. Mike said the hearing advisor has the option to screen questions. They might want to consider a pause before the person being asked the question must respond. The new regulations require the hearing officer articulate the rationale for “bouncing” a question with specificity. Training would need to include what are permissible reasons to rule a question irrelevant and how would they articulate that decision.

Amy Ayres (OkCU) – When reading the guidelines that indicate we will require live hearings, do you understand that to mean we do or do not have the opportunity to come to an informal process that has an agreement from both parties as an outcome or is a live hearing required regardless? Mike said you absolutely still have the informal resolution process. If predictions of some are true, those will be massively expanded at a lot of universities to allow the parties to avoid the stress and anxiety of a live hearing. Mackenzie said she would highly encourage institutions to really look at the informal process. Brandee said to make sure those engaged in the process are thoroughly trained. Mike said consent from all three parties (both parties and the institution) is the key.

Paul Goertemiller (UCO) – Am I correct in that instances involving employees have to go through the informal process? Mike answered yes, according to the regulations, and if the employee is the respondent. Mackenzie commented also that the complainant is a student.

Terri Pearson (WOSC) – Will this recording be available to us to use as a springboard for training on our campus and also decision making about the training we will purchase and how we will invest for Title IX training? Dr. Debbie Blanke answered the question. She said the presenters have not been asked about making this recording available. She cautioned that the presentation recording would only be a resource. Debbie will approach the presenters on making the recording available.

Douglas Hallenbeck (OSU) – If the recording is made available, would it need to go on our website as our formal training piece? Mackenzie said it might and this was kept in mind when creating the PowerPoint. She welcomed the use of the presentation as a resource in light of limited funds. Dr. Blanke asked if the presenters would be willing to send her an email giving their permission to distribute the presentation. She also mentioned the recording would need to be captioned and made accessible before it could be distributed.

Douglas said he is concerned about the differentiation between Title IX cases and student code of conduct cases. He said many times institutions get blamed for kind of scurrying the spirit of the rules. Douglas asked how do we make that determination within the code and make it different than what is covered under Title IX in this guidance? Brandee said the working group is still engaged on this item.

Dr. Blanke suggested a GoogleSheet with each institution's policy link so the information can be shared amongst the council.

COUNCIL BUSINESS

5. Student Leadership Retreat Planning Update – Lindsay Echols

Lindsay advised the council of the SLR planning committee's direction for the retreat. She said in reviewing past retreats that she noticed quite a few workshops had been repeated over the years so she created four topics for the student workshops:

- Communication
- Leadership Development
- Diversity, Equity & Inclusion
- Mental, Physical and Health

Presenters will be allowed to present within these four categories with no more than two of the same topics being held during the same time period. Students will be able to visit multiple topical areas and bring back the information to their campus. A workshop proposal submission form will be created in an effort to attract more presenters.

The question of holding the retreat in person or virtual was brought up during the planning call. Lindsay recently polled the Student Advisory Board. Some students said they would probably not attend if it was virtual. Others thought having it virtual could help schools who have to travel to attend the retreat. Lindsay asked the council to give their opinions for an in-person or virtual retreat.

Will Wayne (OU) said there is so much up in the air with regard to what the fall semester is going to look like. He mentioned large group limitations with social distancing and masking. He said we will run out of planning time if a decision is not made now.

Joshua Busby (LU) said the Executive Committee met this morning and is leaning toward canceling the retreat this year. He said he enjoys the physical presence of fellowship and we may not be able to do this.

Lindsay also mentioned the past student surveys have indicated the students want more time to network and talk to each other.

Liz McCraw (SEOSU) said face to face is off the table for them as she would not have enough vehicles to transport students to the retreat due to social distancing guidelines. She suggested COSA host monthly or bi-weekly facilitated roundtable Zoom discussions for students to have the opportunity to engage with others.

Will Wayne (OU) mentioned COVID-19 cases have increased since the state reopened. He said he would air on the side of caution.

Zeak Naifeh (CU) suggested the idea of meeting virtually in groups and gave the example of the Student Government Association presidents who are already meeting monthly. Zeak said all student government officers could share what they are working on as well as their struggles.

Amy Ayres (OkCU) mentioned the work involved in planning the retreat and then having to also come up with complete shift. She likes Liz and Zeak's ideas but wants to make sure the planners have the capacity to do this or wondered if the retreat should take a pause this year.

Dr. Blanke asked the COSA membership to take a straw poll with a thumbs up on their screen if they are willing to say we are not having the SLR in the fall, and we will take the fall to consider some type of spring online activity. The council members were agreeable to this and voted to cancel the SLR scheduled for September 25, 2020. The planning committee will begin working on a spring event.

6. Election of Officers – William Wayne

The following will serve on the 2020-21 Executive Committee:

Dr. Ina Agnew – OSUIT, Chair

Dr. Douglas Hallenbeck – OSU, Vice-Chair

The council decided to email their nominations to Debbie Myrick for the following members of the Executive Committee:

- Two 4-year representatives
- Two 2-year representatives
- One Private/Independent representative

7. State Regents' Update – Debbie Blanke

- Oklahoma College Assistance Program (OCAP) virtual campus tours - Check your institution's link to make sure your campus virtual tour site is correct on the website.
- Add your Title IX institutional policy link to the GoogleSheet.
- Council on Instruction Academic Policy Workshop will be held via Zoom July 15, 2020.

8. Announcements – William Wayne

Zeak would like to add two topics to the Next Phase Planning Zoom meeting.

1. Students with a compromised immune systems.
2. Student travel in the fall.

9. Adjournment

There being no further business to come before the council, the meeting was adjourned at 11:36 a.m.

Upcoming Events of Interest to the Council

- July 15, 2020 - Council on Instruction Academic Policy Workshop, Zoom
- August 2020 - Students Vote Summit, University of Oklahoma, Norman
- October 29, 2020 - Campus Safety & Security Summit, Reed Center, Midwest City