



OFFICE OF THE SENATE

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MEMORANDUM

From: Robin Bradley Kar
Chair, Senate Executive Committee

To: Senate Executive Committee

Date: April 20, 2020

Re: Confusions about Different System-Wide and Urbana Campus Committees Working to Address Issues of Sexual Misconduct

When reviewing the preliminary Senate input we received via a recent web poll about the draft System-Wide Policy on Intimate Relationships, it became clear to me that there is currently confusion over the relationship between this draft system-wide policy and the recommendations developed by two Urbana campus committees (the Urbana Committee on Faculty-Student Consensual Relations and the Urbana Committee on Faculty Sexual Misconduct) over the last several years. This confusion makes me think that it might be profitable for the Senate Executive Committee, the Office of the Provost, and the Office of the President to try to work together to develop clearer messaging about these issues at all levels (on this campus, at the system level, at the Board level, and possibly on all three campuses).

As all of you know, there were two Urbana campus committees that were working hard in parallel on some issues related to the system-wide committee's work on sexual harassment and sexual misconduct. In both cases, there was some coordination of efforts between the Urbana campus committees and the system-wide committee. But there were also some differences in the purposes or aims of the different committees' work and the substance of their recommendations. Let me now set forth a brief description of how I currently view the relationship among these three different efforts to help us assess the Senate input we have been receiving thus far on these important topics. These issues may deserve broader discussion. Therefore, I would like to ask the Senate Executive Committee at our next meeting to consider voting to distribute this memorandum to relevant parties as a possible basis for further discussions.

a. The Urbana Committee on Faculty-Student Consensual Relationships

Beginning with the Urbana Committee on Faculty-Student Consensual Relationships, this committee was working in parallel with the system-wide committee to develop a set of recommendations for a consensual relations policy that would have applied solely to this campus. Though this campus committee differed in its composition and methodology, it ultimately issued a report with recommendations that are broadly consistent with the core of the system-wide draft policy.

Specifically, the Urbana campus committee recommended a general ban on intimate personal relationships between faculty members and undergraduate students; a general prohibition on intimate personal relationships between faculty members and graduate students in the same unit; and a general ban on intimate personal relationships between faculty members and students over which a faculty member or member of the staff has supervisory or evaluative authority. The Urbana campus committee also recommended an allowance for exceptions, so long as any consensual relationships that may create risks to the University's missions are disclosed and a plan to manage those risks is implemented.

In all of these regards, Urbana campus committee's recommendations are highly consistent with the draft system-wide policy that our Senate has been reviewing. This consistency should not be surprising given that the two committees coordinated while producing their respective recommendations. One of the biggest differences is simply that the draft system-wide policy would apply system-wide, not just to this campus. There are also some differences in nuance and detail. The Urbana campus committee was led by Jamelle Sharpe, a law professor, but the committee cannot be said to have been faculty-led overall in terms of composition.

When considering the recent reactions to the system-wide policy that we received from our senators, it is nevertheless important to remember that the very first time any consensual relations policy was presented to the Urbana Senate was on April 7—via a non-traditional web poll and in the midst of a pandemic. Because system-wide efforts on these topics looked to be partly preempting the more particular efforts of the Urbana Committee on Faculty-Student Consensual Relations once coordination began in earnest, the Urbana campus's final recommendations were never distributed to the Urbana Senate for review or discussion. We instead were waiting for the System's recommendations, which were only given to us in a form to distribute to the full Senate quite recently. On April 7, we—the Senate Executive Committee—presented the full Senate with this draft system-wide policy for preliminary Senate consultation. But we had to use this non-traditional method because we canceled the April 6 meeting due to the COVID-19 pandemic and were not meeting again until April 27.

Hence, the input we are now getting from the Urbana Senate is the very first full Senate input that has been given or received on any consensual relations policy. This fact may help to explain the sense among many senators in the comments we received that this process feels rushed and requires a more deliberative process. This reaction is understandable, given the circumstances—even if it is equally understandable that the system-wide committee might feel

that it has already engaged in an extensive and thorough drafting process, where they tried to obtain input from faculty and stakeholders from all three campuses in some form.

Because of this complex procedural history, there are some outstanding questions that will likely need to be addressed in some way at the implementation stage if the Board approves a consensual relations policy, with whatever revisions based on our input, in May. Specifically: (1) How might an individual university policy operate within these broader system principles in a coordinated fashion? (2) How much deviation might be tolerated between the three universities' approaches to intimate personal relationships not only at the level of "implementation" but also on matters of substance (for example, how some key concepts might be defined). And, finally: (3) How clear is the distinction between "substance" or "policy" and "implementation," in practice, and how are questions of system as opposed to campus authority and about application of this critical distinction to be decided in ways that produce cooperation and coordination, not strife?

b. The Urbana Committee on Faculty Sexual Misconduct

Turning to the other Urbana committee—the Urbana Committee on Faculty Sexual Misconduct—that committee did *not* focus on consensual relations policies. The decision not to consider those policies was intentional. The decision was made both out of deference to the two other committees, which were working on that specific topic, and also to allow for this second Urbana committee to focus on policy recommendations to target *unwelcome* sexual or sex-based conduct (like sexual harassment or domestic violence and abuse) more effectively.

The Urbana Committee on Faculty Sexual Misconduct was faculty-led. It was chaired by the chair of the Senate Executive Committee and had other significant Senate and faculty representation as well as representation from the Title IX Office, the Office of Human Resources, the Office of the Provost, the Office of Access and Equity, and someone from the Office of Legal Counsel. On September 20, 2019, the committee issued a 127-page report (the "Urbana Report") that contained 65 recommendations, each one of which was unanimously supported by a committee with diverse backgrounds and experience. The Senate later passed a resolution 113-1-5 calling on the Office of the Provost to begin implementing these recommendations, with necessary revisions after obtaining appropriate and wider stakeholder input. The Illinois Student Government passed a similar resolution, also unanimously, and the Council of Deans wrote a similar letter, which was also unanimous. The Office of the Provost has convened an implementation committee and has begun the process of implementation on this campus.

Although the Urbana Report did not address consensual intimate personal relationships, it did recommend an employee background check program for sexual misconduct. That fact helps to explain why we received such general Senate support for the other system-wide Policy on Consideration of Sexual Misconduct in Prior Employment. That issue and recommendation was already well vetted on this campus.

But importantly, the Urbana Report also addressed some critical issues that have not yet been addressed in either system-wide policy or any other campus efforts. For example, recognizing that legal definitions of "sexual harassment" provide a floor—and not a ceiling—to the unwelcome sexual and sex-based conduct that an institution might prohibit through internal policy, and that

these legal definitions are often extremely hard to meet in practice, the Urbana Report defined broader classes of unwelcome sexual and sex-based conduct that faculty and employees should not engage in. These standards have now received widespread community support and were carefully crafted to address legal risk and legal opportunities. The Report also recommended implementation of a broader system of progressive sanctions and other responsive measures for faculty who violate internal policies—something that is still not in place with a consensual relations policy and may render a consensual relations policy relatively ineffectual. It is quite rare to get a *faculty*-led committee and then *faculty*-led Senate to recommend broader sanctions *for faculty*—something that many department heads want desperately so they can protect their communities better from sexual misconduct. And yet these recommendations for increased sanctions have also been passed by the AAUP policy committee and Committee on Academic Freedom and Tenure now with only minor suggestions for revision. These developments are substantial and important. They offer an opportunity for broadly accepted progress and cultural change that no institution can or should ignore—and that may even be critical to the success of any new consensual relations policy.

Implementation of the broader recommendations from the Urbana Report would do a great deal to serve many of the deeper purposes behind the draft system-wide consensual relations policy as well. The Urbana Report contains numerous recommendations on confidentiality and transparency. All of the recommendations in the Urbana Report were carefully tailored to address the best-known empirical predictors of sexual harassment within an institution. These broader recommendations have proven wildly popular among our Senate and the broader community. Their implementation would place Illinois at the cutting edge of national developments on these issues and make us a gold standard for how sexual harassment and other unwelcome sexual or sex-based conduct is treated within higher education.

Indeed, one might usefully think of the broader recommendations in the Urbana Report as offering a **third** set of recommendations (apart from the two sets found in the two draft system-wide policies that we recently received), which might warrant a **third** set of initiatives for the President's Office and the Board to take up at the system level. If that were ever possible, then we may want to suggest that the Urbana Report should provide the basis for any such system-level discussions. Any such **third** set of developments at the system level should presumably operate on a different time frame and with different kinds of feedback and input than on the two current system-wide policies we have received. It might also make most sense for implementation of these broader **third** set of recommendations to continue at the Urbana campus, after which point the recommendations could be studied prior to any broader adoption at the system-wide level.

Regardless, it may be important for us to emphasize to the Office of the President and the Board that this **third** area of recommendations, found in the Urbana Report, really needs some direct attention at the system level. The reason for this is that a consensual relations policy is likely to be meaningful and effective only in the context of a wider set of policies that target nonconsensual and unwelcome sexual or sex-based conduct (including sexual harassment) more effectively. If, for example, the aim of a consensual relations policy is to address unwelcome sexual or sex-based conduct, then the *Consensus Study Report on the Sexual Harassment of Women*,

which was published in 2016 by the National Academies of Sciences, Engineering, and Medicine, says—based on an extensive review of the breadth of empirical evidence that is currently available—that “research is quite limited on the connections between consensual relationships and sexual harassment.”¹ It continues: “It is not clear, for example, whether these connections are strong enough to merit their own policies [that is, to merit consensual relations policies on their own].”²

If another aim of a consensual relations policy (at least outside of the undergraduate context) is to promote gender equality and equal access to opportunity in education or the workplace, then Vicki Schultz from Yale Law School—who is a national expert on these issues—“contends that bans on all consensual relationships in an organization ‘may even undercut the goal of achieving gender equality.’”³ The apparent problem is that suppressing all sexuality and intimacy at work can serve the purposes of managerial efficiency without necessarily promoting gender equality, “which is not the same as the absence of all sexuality at work.”⁴ Schultz cautions that “companies [that enact consensual relations policies without more] can feel good about punishing individual employees for sexual offenses while doing little or nothing to address the overarching dynamics of harassment and discrimination that preserve gender hierarchy at work.”⁵ The recommendations in the Urbana Report may therefore prove essential to the effectiveness of any consensual relations policy that is adopted at the system level; and a consensual relations policy may prove of minimal value without the **third** sets of recommendations developed by this campus.

At minimum, I therefore think that we should emphasize—based on the Senate input we have received so far on the broader range of topics relating to combatting sexual misconduct—that the larger aims of the Urbana campus’s proposals to target harassment and discrimination more effectively cannot get lost in system-level discussions over consensual relations policies. There is the possibility for great overlap among these policy recommendations and further beneficial coordination. Perhaps the most important and effective recommendations to shift the culture and climate of our university and combat sexual harassment and sexual misconduct are not yet being addressed with very much apparent urgency at the system level due to a short term focus on consensual relations policies that may not provide a very effective response to the real underlying problems.

Apart from that, we may want to offer to discuss these matters further with the Office of the President and the Office of the Provost to get ideas to help ensure consistency of messaging and that all relevant parties understand the relationships among these three different committees’ sets of recommendations. If you agree with me, then this memorandum could be passed to relevant parties along with the web survey results that we received to prompt further discussion of these important issues.

¹ Id. at 109.

² Id.

³ Id. (quoting Vicki Schultz, *The Sanitized Workplace*, 112 YALE LAW JOURNAL 2061 (2003)).

⁴ Id.

⁵ Vicki Schultz, *The Sanitized Workplace*, 112 YALE LAW JOURNAL 2061, 2067 (2003)).