Faculty meeting 10-18-16

**Stephen Ainlay:** introduces the college lawyer, Chuck Assini who is a Union graduate, and the parent of a Union student and who has worked with the college for 21 years. He also introduced Melissa Kelley, the Title IX Coordinator.

**Strom Thacker, VPAA:** Introduces the motion to approve degrees to 27 undergraduates pending successful completion of requirement in December. (the motion is seconded and passed)

**Dean Mark Wunderlich:** Awards the Donald C Brace Distinguished Advising Award to Eshi Motahar: Eshi was also the first recipient of the award and is now the first person to receive it twice. Students praise his care, encouragement, his interest in helping them make the most of Union by taking a variety of courses and encouraging them to take tough courses. He treats advisees like family, which is very important to new students. Dean Wunderlich quotes one of Prof. Motahar’s advisees who said he/she was confused as a first year student. Prof. Motahar prompted him/her to write a plan for his/her years at Union. Prof. Motahar described career paths of economists and then to encouraged the advisee to find his/her passions. He treats his advisees like family members. (applause)

**Pres. Ainlay** adds personal congratulations and notes that alumni over the years have mentioned how much they appreciated Prof Motahar’s caring attitude.

**Pres. Ainlay** introduces the 3rd agenda item, the Sexual Misconduct Policy and the appendix dealing with adjudication procedures for faculty charged under the policy, by turning the meeting over to FEC chair Peter Bedford who welcomes Melissa Kelley and Chuck Assini.

**Peter Bedford** says that the faculty won’t vote on the sexual misconduct policy because it is college-wide for all members of the community. There are separate appendices for faculty, staff and students dealing with the procedures by which complaints would be heard. Special appendix B is for faculty. We won’t formally vote on it but need to acknowledge this process. There will be the need for a vote going forward to decide which faculty body will hear complaints that are formally reviewed. A vote is required to put that wording in to Section 4 of the faculty manual. As an interim measure the FEC will play the role of reviewing sexual misconduct cases involving faculty that go to a formal hearing. Peter had a conversation with FRB and they weren’t comfortable about taking this role on since they focus on academic matters. To understand what we will vote on we need to understand the appendix and the policy.

**Melissa Kelley:** explains the impetus for creating a college-wide policy. Right now we have different policies for students, faculty, staff. It seemed to make sense to have a college wide policy. It is easier for us if everyone has the same policy and we hold everyone to same standards so they took existing policies and created one
policy that applied to all. But there are three distinct adjudication procedures for faculty, staff and students.

**Chuck Assini:** Union College is under an obligation to have a sexual misconduct policy and grievance procedures that are compliant with Title IX, Article 129-B of the NYS Education Law, and OCR directives. OCR directives, in the form of “Dear Colleague” Letters (DCLs), have been coming out with increasing frequency since the release of the DCL dated April 2011, which imposed directives and guidance as to how colleges should investigate, adjudicate, and resolve sexual misconduct complaints involving students. The reason for single consistent policy that applies to staff, faculty and students is we need to treat everyone the same way; everyone should have same rights that will apply equally across the board. Melissa Kelley is also extremely busy now so can’t train each body (i.e. for staff, faculty, and students) on different policy and reporting procedures. A single policy for all allows more uniformity. Furthermore, the current grievance procedure, the Procedures for Dismissal and Sanctions) for a student complainant against a faculty would likely be found wanting by OCR. We are now one of 195 schools under investigation. Our current policy (the Procedures for Dismissal and Sanctions) is non-compliant because it affords the complainant no part in the process. We must ensure procedural protections for both parties. Both parties should have same rights under the procedures but there are also some separate rights for complainant and respondent. Both have the rights to be treated with dignity, to have advisors of their choice including a council (as required by the Violence Against Women Act) and protection from incident becoming public. We need to preserve privacy for everyone. Both sides have to sign confidentiality, non-retaliation agreements to protect everyone. To ensure that the Faculty Hearing Board is impartial, we have provided both parties the right to challenge an elected member of the faculty serving on the hearing board. The complainant’s special rights include: to: file a complaint without fear of retaliation; to have his/her prior sexual history excluded from procedures except as related to the case at hand; and to be free of suggestion that he/she is at fault. The respondent’s special protections include: the presumption of innocence; the ability to answer the accusation and give his/her own version; the ability to admit fault to avoid an investigation. If that happens, admission of responsibility by the respondent, the faculty hearing board will recommend to the President sanctions. The respondent also has the right have excluded partial excerpts from medical testimony; for instance, the complainant’s therapist cannot present evidence that the complainant is traumatized without contextualizing that trauma within the whole of the complainant’s medical record.

**Peter Bedford:** Asks Kelley and Assini to go through how cases would be handled at different levels.

**Melissa Kelley:** The complaint usually goes first to Kelley presented either by the complainant or by another party. She reviews options for proceeding, collects information and then hangs on to this information if the complainant or other party doesn’t want to go forward at the time. If the complainant/other party decides to go
forward it will go to Melissa Kelley and the Dean of Academic Departments and Programs (DADP) who at this stage talked to the respondent. Often the matter will be resolved informally; if the concern is not egregious; both parties involved in the decision about whether to have a hearing or not. Kelley and the DADP would meet with parties separately. If the two parties don’t want a resolution then would go forward to a hearing. This could then involve other people. If administrators thought there was a threat to campus they could move forward without a complainant. This would be not typical but the administration could investigate without a complainant.

**Chuck Assini:** OCR determines that certain kinds of complaints can’t be resolved informally. Misunderstood speech could be easily resolved with no sanction on the informal level if both parties agree. So there would no need for a full-blown investigation. Hearings are very adversarial because attorneys may be present.

**Peter Bedford:** I understand that sometimes you might advise the complainant that you don’t think there is a complaint to answer.

**Melissa Kelley:** Kelley might do some fact finding and ask witnesses and might explain that this is an unfounded claim. Sometimes people just ask for Kelley to look in to things and the case goes documented so if another concern comes forward she can combine this matter with the new matter. There is no time limit; things that happened some time ago can be used.

**Peter Bedford:** asks Kelley and Assini to answer questions by faculty posted on google docs.

**Chuck Assini:** there is some criticism by the AAUP of OCR interpretation of Title IX. AAUP lawyers believe the OCR has exceeded their jurisdiction. The college recognizes that but the faculty have to understand that we need to please the OCR. There were some questions about academic freedom and speech in the classroom. One of the advantages of a faculty elected hearing panel is that such a panel is uniquely qualified to assess whether the speech in question is necessary in classroom context, so there can be an expert analysis of course content. The FEC will serve as the hearing panel. Kelley will go through training sessions to with the FEC so they will understand the reasonable person standard and other things. These training sessions have started already. Panels training people to hear student cases spend a lot of time on alcohol issues; we will need to spend less time on that for faculty panel training sessions.

**From the Floor:** Could you explain about whether faculty are to be responsible employees? Perhaps you could explain about this?

**Chuck Assini:** Gretchel Hathaway, approximately a year ago, sent a memo out to faculty regarding their duties and responsibilities as “Responsible Employees”. Faculty are responsible employees so they are duty bound to report anything
regarding sexual misconduct that they hear about to Melissa. It should be reported to campus security: but the victim’s name can’t be released unless consent is given by the victim. Melissa Kelley will direct the alleged victim to resources for their support.

**From the floor:** How about International Programs?

**Chuck Assini:** if we sponsor the program and a faculty is present, if faculty receives a complaint he/she has to report to Melissa who may handle the matter sometimes after they return. On college sponsored terms abroad we are duty bound to report sexual misconduct to Melissa. There is an FAQ on the IP website and faculty leading terms abroad will have to undergo training. All the complications faculty directors of terms abroad might experience have been anticipated and addressing on the FAQ on the IP website.

**Melissa Kelley:** Under Title IX it’s important who is important not where; anyone classified as our student is covered by the policies wherever they are in the world just as at home. Outside of NY, NY state laws still apply to our students.

**Chuck Assini:** We have worked hard to distribute a list of resources, i.e. people students can go to, which are confidential. Faculty are not confidential resources because they are obliged to report alleged sexual misconduct if told about it. There are confidential hotlines and meetings with staff at the Counseling Center are confidential.

**Melissa Kelley:** We can provide accommodation or transportation to either party and it will be confidential. The campus safety log doesn’t say what the purpose of the transport is and doesn’t list complainant’s name or that the transport had to do with sexual assault. The respondent may also need services. Everything is confidential. Kelley always tells people when she needs to share information because of other people involved. Both parties can always say they don’t want to meet with certain people. All information will be restricted to those who need to know.

**Peter Bedford:** Could you go over the responsibility of a faculty member? Melissa Kelley has have gone to faculty department meetings to share this information.

**Melissa Kelley:** If a faculty member has a conversation with the student who has shared sexual misconduct information with the faculty member, the faculty member can be involved in the further proceedings if the student wants. It is very important that information about sexual misconduct comes forward because when students choose to tell a faculty member they may have a reasonable expectation that that faculty member will facilitate resolution, and response. Faculty members may be unable to do that so need to report to Melissa Kelley. Certain things are excluded such as if you are present for instance at an Open Mic event and a student shares about fictional experiences the faculty is not required to bring that
information forward. But if the report of alleged sexual misconduct is in a student paper and the faculty thinks that it might be real he/she should/can reach out to the student. Then the faculty will know he/she did due diligence. If in doubt it is always better to over report than to under report.

**From the Floor:** when do you bring in the DA?

**Melissa Kelley:** We leave it to the complainant to decide if she/he wants to pursue a criminal case. Investigators can consult with students without taking action. Kelley and the police meet and discuss with students what the police process would like like.

**Chuck Assini:** Comparisons of campus and criminal routes to take on sexual misconduct cases are posted on the Title XI website. There are many Union alumni in the DA's office so we have good relationships with that office. Some people think schools are not best equipped to handle sexual misconduct issues but the criminal route is a very different process.

**From the Floor:** Students will see this sexual misconduct policy as well as faculty so the speaker is concerned about how it’s written and about the circumstances where sexual misconduct will be brought up. The speaker is especially concerned with how the policy applies to the classroom. There is a conflation of speech and conduct in the policy that is a problem. Saying something and doing something are different but are not treated differently in this document. The conflation of speech and action creates problems by encouraging students to see what’s happening in the classroom as harassment instead of as protected academic speech. The policy needs more attention to protected academic speech and to the conflation of speech and conduct. The speaker is troubled that students will see this and not understand what constitutes harassment in a classroom setting as opposed to pedagogical methods for dealing with controversial subjects. Even if my colleagues on the hearing panel make decisions that protect academic freedom of speech in the classroom students might bring forward unwarranted cases if the language of the policy is left as it stands. Students will read this and bring complaints about things they shouldn’t bring complaints about.

**Chuck Assini:** We have taken the language of our policy from OCR approved policies from other colleges and universities. Perhaps the language can be improved but the existing language takes in to account totality of the circumstances; the alleged harassing speech in the classroom must be so pervasive as to interfere with this students’ learning.

**From the Floor:** In the policy the judgment of whether the speech in the classroom is harassment and creates a hostile environment is defined in terms of whether someone who is just like the complainant, i.e. another student, would experience this speech in the same way. This is not adequate protection of academic freedom.
Melissa Kelley: the language in the new Sexual Misconduct Policy is the same as the student policy that has been in place already for some time and we don’t have students running to make complaints that don’t fit. Kelley doesn’t see people doing that. That’s why there is a lower level inquiry first. Kelley talks to other students in the class about what they thought. What other students thought is the reasonable person standard. We do this first to see if the matter can be resolved informally. The DADP is also involved. We’ve already interviewed a few people about this kind of thing.

From the Floor: Could you address the equity issues involved in having attorneys present: what if one person has an attorney and the other doesn’t.

Melissa Kelley: this is not inherently a problem because the attorneys can’t speak in the hearing and don’t know anything about the college process so students who have an advisor from inside the college rather than an attorney are often better off.

From the Floor: Could you talk about the differences between student hearings and faculty hearings? In student vs student complaints there is an investigator who prepares the report. But in the faculty procedure (Appendix B) it says that the complainant and respondent make their cases before the hearing board.

Chuck Assini: investigators will give their findings to the faculty hearing board in the same manner it occurs in a student hearing. For students versus student complaints, we want to minimize direct confrontation between the two parties. But, with grievances against Faculty, both parties will have the opportunity to be in the same room and ask questions through the chair of the hearing.

From the Floor: are there only faculty on the hearing board? For student cases there are students, faculty, and administrators on the hearing panel.

Chuck Assini: yes the faculty procedure for sexual misconduct cases is modeled on the sanction and dismissal procedures for other kinds of misconduct in the faculty manual.

Peter Bedford: the FEC is continuing to work with Chuck and Melissa so please send the FEC your comments. We will have to visit this matter in the winter of what appropriate faculty body is to hear faculty sexual misconduct cases. Perhaps we need a stand alone body.

Pres. Ainlay: thanks us all