

Date: October 25, 2014

From: Dennis K. Miller

Subj: Intercampus Faculty Council Report – October 23, 2014 Meeting

To: Faculty Council

The following summarizes important issues for the MU Faculty Council from the Intercampus Faculty Council (IFC) meeting on October 23.

1. President Tim Wolfe agreed to a request from the IFC (see letter attached) to form a faculty subcommittee that will address faculty behavior in the area of sexual discrimination, harassment and misconduct. The subcommittee will work with the General Counsel's office and consultants contracted by UM to a) review the current critical issues and problem areas at the four UM campuses, b) understand current federal statutes and their interpretation, and c) review the current UM Collected Rules and Regulations and campus bylaws. Based on the research and consultation described, the subcommittee will work with the General Counsel's office to develop revisions of collected rules, as well as policies and procedures. I will represent our campus and serve as subcommittee chair.

The President encouraged the subcommittee to work closely with Marsha Fischer (UM General Counsel Office) and the Title IX consultants contracted by UM. He also asked the group to work quickly, such that the collected rule revisions can be presented to the Board of Curators in February. The President reminded the IFC that, under the authority given to him by the Board, he can institute changes as an executive order.

We should appreciate the work of Dr. Hank Foley (Executive Vice President for Academic Affairs) and Dr. Steve Graham (Senior Associate Vice President for Academic Affairs) on our behalf to convince the President to form a *faculty* group to develop the changes to collected rules, policies and procedures in this area, rather than relying on the outside consultants to do this work. Very few colleges or universities have addressed and revised their faculty conduct policies in response to the recent emphasis on Title IX. UM has the opportunity to be a leader in this field and set a standard; however, we also need to be critical and skeptical to be sure our policies have appropriate respect for the rights of the complainant and accused.

2. In response to request from the IFC and faculty members from our campus, Dr. Deborah Noble-Triplett (UM Assistant Vice President for Academic Affairs) discussed the responsibilities of mandated reporters under the UM Collected Rules and Regulations (CRR 600.020.E).

- A *confidential* reporter is an employee who is not required to report their knowledge of sexual harassment, sex discrimination and sexual misconduct to the campus Title IX Office. This exemption is assigned because knowledge of the offense is learned in their capacity of their profession (e.g., an attorney working with a client, clergy, health care providers, counselors, and their associated staff) or because they were given this status by the university because of their work (e.g., a rape crisis center worker). The confidential reporter must have learned of the Title IX incident in these roles. The University has indicated which employees are confidential reporters and is campus specific.
- A *mandated* reporter is an employee that is not a confidential reporter.

Dr. Noble-Triplett stated that there will be training for mandated reporters in November that will tell faculty members what they should do if they see, hear or learn about a violation. The basics of sex discrimination, sexual harassment and sexual misconduct are covered in the existing sexual harassment training (i.e., Preventing Sexual Harassment, [www.umsystem.edu/ums/hr/harassment\\_training](http://www.umsystem.edu/ums/hr/harassment_training)), which is required for all faculty and staff. Dr. Noble-Triplett also said that faculty members should err on the side of reporting, rather than not reporting, violations to the Title IX Office.

3. The President responded favorably to reports from SL and MU on student-led activities on sexual harassment, discrimination and misconduct prevention. He encouraged faculty members to contribute to these efforts.

4. The IFC and President Wolfe discussed strategic planning and the strain it has been placing on the campuses: Faculty members believe that they are being asked to do more with less. The President acknowledged that there must be balance between efficiency and quality. He said we have to stop doing some things, so that we can do other things better.

5. The IFC continued discussion of a policy on Evaluation of the Ability to Work (see attached) for faculty members. The policy addresses the process and criteria to be used when determining what actions are appropriate with respect to a faculty member who may be unable to perform the essential functions of their position (e.g., neurodegenerative disorder or psychiatric illness). Representatives from other campuses reported that some of their faculty members are concerned that the policy can be abused to terminate “disruptive” faculty members, rather than those who are medically unable to work.

6. In response to a question from the IFC, Dr. Zora Mulligan (UM Chief of Staff) said that, in her opinion, Western Governors University ([missouri.wgu.edu](http://missouri.wgu.edu)) will not have an impact on UM or MU activities, despite the public support it receives from Governor Nixon.



October 15, 2014

President Timothy M. Wolfe  
321 University Hall  
Columbia, MO 65211

To President Wolfe:

The Intercampus Faculty Council (IFC) shares your goal of eliminating sexual discrimination, harassment and misconduct from the University of Missouri (UM). Executive Order 41 was an important step toward achieving this objective as it developed powerful, but fair, adjudication procedures for student behavior. The IFC would like to extend this effort by contributing to the development of policies that appropriately address faculty behavior in these areas. The new policies would include procedures for adjudication of complaints against faculty members and the scope of punishments, including the removal of tenure.

The IFC strongly believes that faculty should have a strong voice in reviewing and developing policies on faculty behavior. While protecting the vulnerable against abuse is the top priority, shared governance in the process of developing professional rules and regulations is also a concern. New policies are more likely to be accepted by faculty members as valid if faculty members contributed in a meaningful way to creating the policies, than if the policies were developed unilaterally by administrators and outside consultants. The IFC has developed an effective working model with you on other issues, such as faculty workload, where policies are developed by back-and-forth discussion among you, the IFC, and UM System administrators. These ideas are then shared with faculty groups and administrators on the campuses by IFC members. We would expect to use this standard vetting process we use for all collected rule changes that has worked so well for us in the past.

We propose to establish a subcommittee of IFC members that will address faculty behavior in the area of sexual discrimination, harassment and misconduct. This subcommittee will become educated on the problem and its scope, and then will develop specific recommendations for revision of collected rules, policies and/or procedures. These revisions will be compliant with federal statutes (e.g., Title IX), while respecting academic freedom and tenure.

To develop these recommendations, the IFC subcommittee will follow the work plan described below.

1. We will evaluate policies at other colleges and universities to determine if there are concepts, rules, policies and procedures that could be adopted.
2. We will work with the General Counsel's office and consultants contracted by UM to a) review the current critical issues and problem areas at the four UM campuses, b) understand current federal statutes and their interpretation, and c) review the current UM Collected Rules and Regulations and campus bylaws.

3. IFC members will meet informally with members of groups (e.g., staff counsel, student government and the women's center) at their respective campuses to hear their perspectives.
4. Based on the research and consultation described, IFC will work with the General Counsel's office to develop revisions of collected rules, as well as policies and procedures.
5. IFC members will share these revisions, policies and procedures with faculty and administrators at their campuses for comments.

We consider eliminating sexual discrimination, harassment and misconduct to be the top priority for the IFC and want to begin work on this plan immediately. We would like to have revisions of collected rules, as well as policies and procedures, to share with faculty and administrators at our campuses shortly after the start of the new calendar year. The IFC asks for your support of this plan, so we can work rapidly and effectively. We hope that your support will allow us access to relevant documents and the valuable time of expert UM administrators and consultants. Importantly, this plan does not minimize our desire to also work with you to focus on prevention of these behaviors and to improve the environment for students, faculty, staff and visitors at UM.

I hope we can reach an agreement on this plan at the October 23 IFC meeting to begin moving forward on it. I am also available to discuss it ahead of the meeting.

Sincerely,



Dennis K. Miller  
Associate Professor of Psychological Sciences, University of Missouri

cc. Steve Graham, Hank Foley, Craig Roberts

# Evaluation of the Ability to Work University of Missouri System

- I. Purpose: This policy addresses the process and criteria to be used when determining what actions are appropriate with respect to a faculty member, either regular or non-regular, who may be unable to perform the essential functions of his or her position, despite reasonable accommodations. This policy applies, and can be implemented, only in those situations in which observable conduct has raised a serious concern as to whether a faculty member is able to perform his or her essential functions. In accordance with the process and criteria described below, the faculty member may be referred for a fitness for duty evaluation. Application of this policy is not intended as a substitute for other University policies or procedures related to performance, including those imposed because of clinical or professional requirements. In addition, application of this policy is not a substitute for discipline or action taken because of performance deficiencies unrelated to ability.
- II. Scope: This policy is applicable to faculty members, either regular or non-regular, described in Section 310.020A of the Collected Rules and Regulations of the University of Missouri as holding academic staff appointments. This policy is intended to be consistent with the Americans with Disabilities Act, the Rehabilitation Act of 1973 and the Missouri Human Rights Act and should be interpreted to assure compliance with those mentioned laws.
- III. Special Considerations for Faculty Members: Faculty members have rights that stem from the University's Collected Rules and Regulations, from the application of the general principles of academic freedom, and from the role of faculty members in the shared governance structure within the University of Missouri. This policy is not intended to compromise this special status but rather is intended to clarify and protect the rights of such faculty members and of the University of Missouri and its constituents.
- IV. Rights and Obligations of Faculty Members
  1. Faculty members shall incur no loss of pay or benefits solely because the evaluation process discussed below is underway until and unless official action is taken to alter the faculty member's employment status in conformity with other provisions of the Collected Rules and Regulations of the University of Missouri.
  2. Nothing in this policy overrides rights provided to faculty members and others with academic staff appointments under the Collected Rules and Regulations or other applicable contracts, including the right to grieve or appeal the application of this policy under the existing Academic Grievance Procedure found in Section 370.010 of the Collected Rules and Regulations.
- V. Rights and Obligations of the University

## Evaluation of the Ability to Work University of Missouri System

1. The costs of the fitness for duty evaluations by the health care providers designated by the University and the associated costs will be borne by the University, and not by the faculty member.
2. If the outcome of the evaluation is Able to Work with Limitations (see Section VI.3. *Procedures* below) the University shall make reasonable efforts to accommodate those limitations if it can do so without undue hardship.

### VI. Procedures

1. Evaluation: A faculty member of the University may be required to be examined by appropriate licensed/certified health care professional(s) designated by the University in order to determine her/his ability to perform the essential functions of her/his assigned duties and responsibilities. Such an evaluation may be required when the campus Provost, in consultation with the appropriate academic unit head, the chief campus human resources administrator and a representative of the Office of the General Counsel, determines that the faculty member's documented job performance or conduct gives reasonable cause to believe that a physical or mental condition may be adversely affecting the faculty member's ability to perform his or her essential duties or may be posing a threat to the health or safety of the faculty member or others.
2. Process: The head of the academic unit may request that this policy be invoked for a particular faculty member by notifying the campus Provost of the documented facts suggesting a need for such an evaluation. A Provost's designee, along with the dean or designee of the school or college where the faculty member holds an appointment, and two tenured faculty members appointed by the chair of the campus faculty senate or council, including at least one faculty member from the same school or college as the faculty member whose fitness for duty evaluation is being sought, will comprise an "evaluation panel" to review the request ensuring that the academic unit head has documented 1) that an inability to perform the essential functions of the faculty member's job may exist, 2) that the academic unit and the faculty member have been involved in efforts to resolve the problem, and 3) that a mutually satisfactory resolution has not been achieved.

Attempts must be made to resolve the problem at the level at which the University faculty member carries out his/her primary professional duties, normally the unit in which he or she is appointed. These procedures are not intended to prevent the faculty member or the academic unit head from seeking other recourse as provided by the Collected Rules and Regulations.

If the evaluation panel concurs that an evaluation is warranted, the evaluation panel will appoint an impartial Coordinator for this process.

## Evaluation of the Ability to Work University of Missouri System

The Coordinator will be selected from a panel of six [tenured](#) faculty members appointed by the provost after consultation with the chair of faculty council/senate. Two of the six original members will serve one-year terms, two will serve two-year terms and two will serve three-year terms. Thereafter, all members shall serve three-year terms with the provost appointing two members annually after consultation with the chair of faculty council/senate. The Coordinator, in consultation with the General Counsel's office, will take the following steps:

- a. Advise the academic unit head on the preparation of background documents related to the reasons for the evaluation.
  - b. Inform the faculty member in writing that an evaluation is required and provide information on the faculty member's and University's rights and obligations under this policy.
  - c. Prepare a list of between three and five names of appropriate health-care professionals, at least one of whom is not employed by the University, for the evaluation process. The person to be evaluated, or in the event that the person is unable or unwilling, an authorized representative with legal authority to make health-care decisions for the person to be evaluated, shall select from the list the health-care professional(s) to perform the evaluation. If the person to be evaluated or his or her authorized representative has not selected the health-care professional(s) to perform the evaluation within two weeks following receipt of the list of health-care professionals, the Coordinator will select the health-care professional(s) to perform the evaluation and inform the person to be evaluated of the selection.
  - d. Inform the faculty member of the time and place of the required evaluation. Repeated failure to attend an evaluation scheduled at a mutually agreeable time shall constitute evidence regarding the faculty member's ability to perform the essential functions of the faculty member's job and may justify disciplinary action.
  - e. Forward to the evaluation panel and the faculty member, a report specifying the focus, the method, the results and the conclusion of the evaluation, relative to the faculty member's ability to perform the essential functions of the faculty member's job.
3. Outcome of the Evaluation The Coordinator will then forward the results of this evaluation to the Provost who will review all the materials and make the final determination as to the faculty member's ability to work. That determination will include one of the following: able to work without limitation; able to work with limitations; unable to work.
- a. *Able to work without limitation*: if the Provost determines that the faculty member is able to work without limitations, the Coordinator will notify the faculty member and the academic unit head.
  - b. *Able to work with limitations*: If the Provost determines that the faculty member is able to work with limitations, the Coordinator

## Evaluation of the Ability to Work University of Missouri System

will consult with the faculty member and the appropriate academic unit head and will notify the faculty member of accommodations available which do not impose an undue hardship on the University.

- c. *Unable to work*: If the Provost determines that the faculty member is not able to perform the essential functions of the faculty member's job, the Coordinator will notify the academic unit head and work with the faculty member as to her or his options which must be agreeable to the Provost and which may include, but are not limited to, application for long term disability benefits, leave of absence or resignation
4. Return to Work If the Provost determines that the faculty member is not able to perform the essential functions of her/his position and the faculty member takes a leave of absence, a follow-up evaluation will be required to certify that the faculty member is able to return to work and under what conditions prior to the faculty member's return to work.
5. Confidentiality and Access to Information Reports and other information about the evaluation and any follow-up treatments shall be kept by the Provost and will not be included in the faculty member's personnel file. Upon written request, the faculty member may inspect report(s) by the designated health-care professional(s) who conducted her/his evaluation in accordance with applicable laws. The Provost will provide those in the faculty member's reporting chain with only that information about the faculty member's condition necessary for the proper supervision of the faculty member. In the event of the initiation of an appeals process, the hearing group may be provided access to any materials related to the evaluation with the agreement of the faculty member.

### VII. Assistance

1. For questions about this policy, please contact the office of Provost.

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This policy draws extensively from the *Evaluation of the Ability to Work* Policy at the University of Illinois as detailed at: <http://cam.illinois.edu/ix/ix-a/ix-A-20.htm>