The University of Rochester Commission on Women and Gender Equity in Academia

Response to the Recommendations from the Report of the Independent Investigation, January 11, 2018

2/19/18

Below you will find the response of the Commission of Women and Gender Equity in Academia, hereafter "the Commission" to the recommendations made in the report provided by Debevoise and Plimpton, LLP on January 11, 2018. These are intended as initial comments strictly associated with these recommendations, and do not reflect the full spectrum of our concerns related to gender equity across campus. The Commission will report out on other aspects of our work later in the year. For these initial recommendations, we look forward to the opportunity to discuss them in greater detail with the relevant members of the administration, Faculty Senate, students, staff and other members of the University community as the authorized persons and bodies seek to implement changes recommended by the Independent Investigation.

Outlined below is a brief summary of the recommendations made in the report, followed in italics by The Commission’s comments.

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For President and General Counsel

1. Prepare and begin using a plain English “Advice of Rights and Procedures” for all involved in a claim against a faculty member. Should include:
   a. How/where to make claim
   b. How investigation will proceed
   c. Sources of support
   d. Obligations of confidentiality
   e. How participants will be informed

   We wholeheartedly agree with this recommendation, and in fact would go farther to recommend that such a document, or set of documents, be prepared for all involved in a claim against ANY member of the University Community. It should also be available for any who might be considering such a claim, before they choose to make a formal report. The rights and procedures may well be different for situations arising between students, between students and faculty, between faculty members, and between staff members, providing appropriately tailored advice for each group, and help in identifying the correct advice is critical.

   The Commission also recommends that these guides should include information about disciplinary actions that may be taken for the accused party if they are found to have violated our policy. These actions may reflect a possibility for proportional justice based on the seriousness of the violation. Here, too, the nature of the disciplinary actions may be customized based on the role of the accused party, but should be clearly articulated.

   For long-term implementation, we believe that we should create a single center where all concerned members of the community may bring their claims and receive this information. In the short term it might be necessary to create a "virtual center," but the mid term goal must be an easily accessible physical center on campus.
2. Develop list of trained University personnel who can serve as advisers, then notify all of the existence of this group.

The Commission agrees with this recommendation; however we recognize that it is quite complex to implement and may need refinement over time. These advisers must be adequately trained, sufficiently available, and compensated for their participation as advisers. They will need to be sufficiently independent from the involved parties and from the interests of the University. These advisers should be distinct from those who may be available for confidential conversations, before a decision to file a formal report. It will be important to monitor the activities of the advisers and confidential resources in order to ensure that they don’t discourage or deter reporting.

The Commission is also aware that some students have felt that they have not had access to such advisers, even though advisers are currently allowed for Title IX cases and complainants are notified of their availability. We have not identified the reason for this disconnect, but suspect that the students are simply overwhelmed by the process. Thus, those in charge of our process must take a more active role in connecting students with potential advisers or improving our communication about their availability.

3. Hire two new counsel – one for complainant, one for accused. They will not serve as lawyers but will be able to advise on policy, procedure, rights, support. May not advise or represent UR on this type of legal actions, but may be involved in training.

We agree with the sentiment of this recommendation to offer independent legal advice to each party of the complaint. However, we are not in a position to comment on how appropriate it may be to make new hires, in terms of workload or demand for such employees.

We received a very intriguing suggestion from a member of the community about this topic. They suggested that the University of Rochester could partner with the American Association of University Professors, or another organization, to develop a pool to which all member universities could contribute that would offer such legal advice more independently from the university. This might be similar to the model used for pooling of malpractice insurance for the hospital. The Commission views this as a longer-term option to explore, and we recommend that immediate action be taken to improve our policies, procedures, and support mechanisms for all members of the community who are involved in complaints.

4. Review mandatory training. Should be at least annual and on arrival.

The Commission has reviewed some proposed online training materials and have reviewed the times and ways that such training is administered for different groups. We have not yet been satisfied with the online courses under consideration, particularly with respect to their tone and clarity of procedures. Any online training course adopted from an outside vendor must be carefully tailored to our University. The Commission recommends implementing a mixed model of online training as well as some in-person training. We also have noted gaps in the administration of training for some members of the community, including post-doctoral fellows and residents. It would be beneficial to have some form of expanded training available “on-demand” for members of the community who have concerns, or wish to be sure that they are providing appropriate support for others. There is also a need for enhanced and more specific training for newly appointed Department Chairs, Deans, or supervisors to better understand their role in the process.
5. Amend Policy 106 (Harassment policy) to specify
   a. Examples of acts that may constitute harassment
   b. Range of disciplinary actions that may be taken when there IS a violation
   c. Range of disciplinary actions that may be taken for problematic conduct that doesn’t rise to a violation.
   d. Also consider adding words “encouraging” reporting

   We agree that Policy 106 (and the reference to it in the Faculty Handbook) must be clarified. While Policy 106 does include examples of acts that may constitute harassment, these should be included in the Faculty Handbook as well, and updated to reflect the concerns of the community.

   With respect to discipline, we recommend that disciplinary actions for faculty need to be defined and publicly articulated for this and other policies as well. This may warrant development of a general policy and procedure, which would be consistent with other schools. While cases of revocation of tenure require very strict processes as outlined in the Faculty Handbook, it must be made clear that there are other disciplinary actions that can be applied. In addition, disciplinary actions for faculty must be implemented with appropriate consideration of all students and other members of the community who may be affected by these actions.

   While we agree that there should be a range of disciplinary actions for “problematic conduct,” we find the recommendation unclear. We must be clear that repeated conduct which is problematic will not be tolerated, and thus should be considered a violation. Disciplinary actions should be increasingly severe if problematic conduct is reported more than once. We should also clarify that our threshold for acceptable behavior is not bound strictly by the legal definition, but rather based on values and a code of conduct that is ethically consistent with an academic and medical center environment.

   In terms of reporting, an appropriate contact within the Office of Human Resources (HR) should be identified for these cases, in case the HR Business Partner does not appear to be independent from the departmental leadership. We have heard of many cases that did not advance past an initial informal report, thus we agree that words that encourage reporting are needed.

   In terms of procedure, we recommend that the adjudication of such cases should not be in the hands of a single “decision maker,” either initially or in the appeals process. We recommend adoption of a model in which a committee consisting of trained members from the University community is involved.

6. Retain outside counsel to review procedures regarding confidentiality to better balance confidentiality and the need for transparency.

   We agree that our recent experience suggests that our emphasis on confidentiality over transparency has been harmful to many members of the community. This also needs clarification, and the rules should be clearly articulated in the “Advice of Rights and Procedures” described above.

7. Publish annual report of the number of complaints and information on how they were resolved.

   Other schools have found a way to publish these annual reports in a manner that provides confidence that cases are indeed investigated and taken seriously. While risks of loss of privacy are a concern, we think the balance toward transparency will allow us to better monitor our climate and
assess whether programs and interventions are working to reduce problematic behavior. This approach will also clarify the possibility of proportional justice, which may alleviate the impression that nothing can be done for problematic behavior that doesn’t warrant revocation of tenure or other severe disciplinary action. Over time, this should lead to earlier reporting, when corrective actions are still feasible, which should in turn lead to improvement in the overall environment.

8. Implement procedures for review of e-mail.

   At this time, we do not have specific recommendations on this issue, but agree that all members of the community should have confidence that their private communications will be treated with great care.

9. Easy online access for all policies, procedures and resources.

   This is an area requiring significant improvement, particularly for faculty. There are many different handbooks, policies and regulations in our very de-centralized University. Our orientation procedures are inconsistent in helping faculty (and trainees) understand where to find these materials. We must do a better job of informing members of the community when policies are changed and which policies apply to their particular working or academic situation.

   Many of our policies need clarification with respect to the procedures used for implementation. It is not always clear who will be held accountable for violations, or how they are monitored for adherence.

   While we agree that easy online access is important, we also believe that it is critical that department chairs and others in advisory roles have a clear understanding of these policies and receive appropriate training as they assume management roles.

   There is also a great deal of confusion with respect to the resources that are available for personnel matters. For example, interactions between faculty and the HR Department are unclear and inconsistent between different academic units. Many members of the community remain unaware of the Intercessors, or unclear about the role that they may play. Recent additions of ombudspersons is a step in the right direction, but their training, responsibilities and availability has not yet been fully defined and articulated. We are pleased to hear of the addition of a Vice Provost of Academic Affairs, and a staff member who supports that position, and look forward to greater clarification of their roles and expectations.

For Board of Trustees, President, Provost, Senate Executive Committee, GSA and Commission on Women and Gender Equity in Academia

1. Consider proposed amendments to UR Intimate Relationship policy, including a flat prohibition of intimate relations between faculty and students in same department. Obtain input from outside experts and other universities.

   We have been involved in the development of a revised Intimate Relationships Policy for the Faculty Handbook, and agree that it warranted clarification and strengthening. We also think the policy on Conflicting Relationships (Policy 121) between employees deserves similar attention for clarification, and suggest that the “academic authority” that faculty may have over one another deserves attention in the Faculty Handbook.
While these policies have been in existence for some time, we find it interesting that relatively few management plans have been filed with the Associate Vice President for Human Resources. This does not suggest that such relationships are problematic in any way, but rather that the awareness and implementation of the policy are not consistent. As described above, we must develop stronger methods to raise awareness of policies, offer training and monitor compliance.

The proposed Intimate Relationship Policy was developed through a cooperative committee including members of the faculty, graduate students, Faculty Senate Executive Committee and the Commission. It has been posted in draft form for comments from members of the community. As other policies are revised, we recommend a similar approach, in order to improve clarity and raise awareness among all members of the community.

2. Consider establishing a dedicated office, separate from OOC to handle sexual harassment claims against faculty. Adopt some procedures from Title IX office, create committee to recommend corrective action for every investigation of faculty.

The Commission agrees that separating the investigation of claims against faculty from the Office of Counsel would provide greater confidence in the independence of the review process. This office could then integrate some of the procedures in the Title IX office, and perhaps become the “one-stop” center for any individual who wants to file a complaint against a member of the community. While the office may refer some complaints to other offices for investigation and adjudication, the presence of a dedicated office may clarify the process.

We also agree with the recommendation to use a committee structure to recommend corrective actions for complaints against faculty. This approach has been adopted at several of our peer institutions, so discussions with them are warranted to guide our establishment of an appropriate committee, to identify relevant training and to consider recognition and/or compensation for participation in this role.

In the long term, this dedicated office may be a logical entity to implement some of the Commission’s anticipated future recommendations with respect to the bigger picture of climate and gender equity.

For the President and Board of Trustees

1. Appoint a Senior cabinet-level official to oversee implementation.

We agree that implementation of these recommendations is complex and involves many different entities within our already very de-centralized University. Thus, a senior cabinet-level official will be essential to have the broad perspective and authority to enact change. We have had consistent cooperation from many offices across campus, but implementation of the specific policy changes, communication efforts, and training will require a coordinated effort. In addition, the move toward an articulation of values that will create sustainable change will require both authority and leadership at the highest level.

2. Appoint a trustee or committee to oversee implementation.

We welcome the idea of a committee with involvement from relevant members of the community to oversee implementation. The issues that prompted this investigation affect faculty, students,
staff, alumni, and trustees. Broad perspective will be essential, coupled with a commitment to fairness, justice and respect for all members of the University community.

The Commission expects to remain involved in these discussions and to offer our insight based on our methodical review of the situation here at the University of Rochester and across the country, our conversations with members of the community, and our personal experiences. However, we recognize that we do not fully represent all members of the community and thus need to better engage staff, alumni and administrators in the remaining process of implementation.

Above, we have articulated our responses to the recommendations made in the Report of the Independent Investigation, and hope that they may be helpful for the urgent response requested. We are still hard at work on other investigations with respect to gender equity and support for women and other under-represented groups across campus. We anticipate generating additional recommendations related to other policies and procedures, requests for studies of salary equity, and guidance for orientation and other career advancement approaches later this year.