



**MEETING OF THE OVERSIGHT COMMITTEE ON SEXUAL ASSAULT
STATE BOARD OF HIGHER EDUCATION
PORTLAND STATE UNIVERSITY
JANUARY 22, 2008**

Minutes

1. CALL TO ORDER/ROLL CALL/WELCOME

Called to order at 10:05 a.m.

Committee Members present: Chair Tony Van Vliet, AJ Arriola, Ryan Hagemann, Heather Huhtanen, Henry Lorenzen, Dalton Miller-Jones (1:15 p.m.), and Phil Zerzan. Members participating by phone included: Doug Beloof and Jonathan Eldridge. Linda Brady was absent due to a business conflict.

Staff included: Chancellor George Pernsteiner, Bridget Burns, and Jan Barkley.

2. MISSION

As it was noted by Chair Van Vliet that the universities in the OUS did not have a uniform set of policies and procedures to deal specifically with sexual assault, this committee was formed to help devise a policy to handle this issue.

The committee members and visitors were polled for their background and strengths that could be applied to constructing a consistent policy and each participant was asked what issues need to be specifically addressed in building such a policy.

3. TYPES OF CASES; 4. TYPES OF STEPS AND PROCEDURES; AND 5. GENERAL DISCUSSION ON WHERE TO START

Ryan Hagemann noted that he has a strong background in dealing with sexual assault cases in a campus setting and extensive experience in developing student conduct codes and interfacing various student conduct code violation cases with FERPA (the Family Educational Rights and Privacy Act).

Phil Zerzan, who is the Oregon State Police station commander assigned to Oregon State University, was instrumental in developing a protocol for police response to campus sexual assault cases. He sees this as a very victim-centered response with strong emphasis on both investigation and caring for the survivors. The protocol has since been adopted by all Benton County-involved law enforcement.

AJ Arriola indicated that she and her department have been researching ways to enhance and streamline PSU's policy in the areas of serving both the campus and the community and enhancing student access to services related to sexual assault.

Heather Huhtanen is the director of programs for the Attorney General's Sexual Assault Task Force and, as such, supervises training programs, statewide prevention programs, and the statewide sexual assault nurse examiner program, as well as the Task Force's efforts in legislative activities and public policymaking.

Henry Lorenzen, former President of the State Board of Higher Education and now Chair of the Governor's Task Force on Campus Safety, has immediate knowledge through a family member's experience with this issue. Mr. Lorenzen sees this Committee's work as folding naturally into the Campus Safety Task Force work and notes that the sensational cases of campus violence in the national media aren't the types of events which put the most students on campuses at risk; rather, the greatest risks to students stem from depression, leading to sexual assault or suicide. He noted the scarcity of available resources and that the goal should be adoption of best practices in prevention and handling of these cases coupled with cultural changes on the campuses. He noted there are significant impediments (including federal law) to the application of best practices and that Senator Gordon Smith indicated a willingness to review FERPA and its current negative impact on successful prosecution and punishment of perpetrators.

Jonathan Eldridge assisted in writing the Lewis & Clark College student conduct policy when he was there and is now working to develop a policy at Southern Oregon University. He noted that in a vast majority of cases alcohol is involved and it would be vital to develop students' responsibility in relation to alcohol consumption as part of a sexual assault prevention protocol. He also noted that there needs to be very, very clear definitions of assault and consent – both effective and ineffective – as well as the need to develop processes that encourage incident reporting and make it easier for survivors to come forward and get through the process. He noted that a very big part of the process is clear education as to policies, including providing scenario examples to illustrate definitions – to find ways to make it more “real” as a tool for greater comprehension.

Chair Van Vliet also noted that information coming out of a recent seminar indicated a link between primary- and middle-school bullying sometimes leading to these same people becoming perpetrators of sexual assault on college campuses.

Chair Van Vliet summarized that some of the key issues this Committee would review include awareness (including developing strong student conduct codes); incident reporting; care of victims; and investigation, prosecution, and punishment of perpetrators – specifically, consequences imposed by the universities, administratively.

Ryan Hagemann outlined the general institutional approach – formal hearings and the appeals process and the nature of campus hearing boards; he noted that there is occasional considerable confusion where a perpetrator looks at administrative proceedings as a criminal “trial” process rather than as an administrative proceeding. He noted the inherent danger to institutions in acting as though a crime took place and being sued where the alleged perpetrator is eventually

exonerated. Mr. Eldridge commented that any hearing board really needs to understand the impact on students and how the makeup of a hearing board (both faculty members and students) may act as a deterrent to certain students coming forward with information on an incident.

Lt. Zerzan acknowledged that this is a grossly underreported crime. In describing OSU's response, when a victim comes forward he notes that OSU has a multifaceted approach by a critical response team to support the victim, including student conduct, the dean of students, right down to housing and obtaining a no-contact order – there is a need for a policy incorporating an all-inclusive group of people able to respond to any critical incident including sexual assault, and he feels that OSU has prepared such a comprehensive team. He also noted the reluctance to include law enforcement or even report to law enforcement and that reluctance has been addressed by getting advocates involved early in the investigation. The best approach is a comprehensive approach that involves all the players.

Mr. Eldridge again brought in the issue of education and noted that students don't always recognize an actual assault as being the same as described in written policies, and he noted that certain campus cultures make dangerous behavior difficult to recognize. He reiterated the difficulty in getting students to report incidents and that a supportive environment is critical for a survivor who may anticipate a second traumatization by bringing forward an incident. He agreed that campus support mechanisms have to be very clear about how these cases are handled. The most important thing is that the victim needs to be kept at the center of the process.

Heather Huhtanen outlined what she feels are the core issues: definitions and terminology – she referenced Sokolow's white paper (copies were provided) and the nature of response to a victim coming forward, especially where there is a "court of public opinion" and that gender politics needs to be removed from the response to the incident at all levels. Ryan Hagemann agreed, providing illustrative examples of terminology and definitions gone wrong to the detriment of the educational institution – he pointed out it is crucial to de-emphasize the criminal or adversarial side. He reiterated that although there's a sort of parallel track with the outside criminal justice system, it's broader in the community; sexual misconduct, for example, could be much broader than rape in the first degree. Mr. Hagemann pointed out that trying to de-emphasize the criminal nature of what we do on campus would allow more attention on changing values, advocating for survivors, and being able to reach out to outside non-criminal justice type agencies to help with protecting and assisting students. He noted that it is intensely adversarial in the criminal justice system – everyone wants to sue and "lawyer-up" and that's what happens and said that every one of the cases he worked on had a reputable trial attorney representing the alleged perpetrator. There followed a general discussion of privacy versus the power of subpoena in law enforcement investigations and campus investigations.

Henry Lorenzen pointed out that ironically the student victim in a law enforcement investigation becomes more a part of that investigation rather than the focus of an administrative proceeding – yet law enforcement protections are often hampered by institutional protections such as FERPA. He noted that we need to establish a baseline of what our individual institutions are doing in this area with regard to all aspects of sexual assault, whether definitional, training, prosecution, or treatment of victims or the punishment or the ultimate punishment dealt out; to develop that baseline information and then seek outside consultant help in reviewing what our institutions are

doing and comparing that to what might be considered best practices across the United States. In his opinion OUS would then be in a position to provide some fairly significant direction to the universities on those that are deficient on how to correct those deficiencies, and also recognize the universities that are doing an excellent job.

Lt. Zerzan noted that there could be some university sanctions based on behavior that doesn't rise to the level of criminal – he is unaware if that occurs at other campuses where local law enforcement, conducting the investigation, provides information to student conduct.

Chair Van Vliet noted there are privacy aspects to institutional and investigative information and this was discussed at length together with the key issues of education, treatment, response, and institutional consequences. Chancellor Pernsteiner indicated the need to identify best practices in all these areas.

Heather Huhtanen noted that there seems to be grant money available to institutions to fund these efforts and that the University of Oregon has had two federal grants to enable them to develop a sexual-wellness advocacy team. The goal at all institutions should be incident reduction—primary prevention, risk reduction, and cultural changes—getting at the root issues of what causes sexual violence; the role alcohol plays in incidents; credibility of victims, witnesses, and perpetrators; and behavior modification. She also noted there is a subcommittee of her Task Force comprised of people working with victims, including judicial and public safety officers and counselors. Chancellor Pernsteiner and Chair Van Vliet asked if it would be possible for that group to meet with this committee and requested a contact list.

Heather Huhtanen then brought up the relationship of law enforcement with campuses and noted that this relationship varies from campus to campus and illustrated with the agreement between Eugene Police Department and the University of Oregon, to which Mr. Hagemann contributed an anecdote about sorting out various incidents as to whether they were properly the purview of law enforcement or the campus. Heather also provided an example of a very badly handled incident at Willamette University last year. She pointed out that we also don't want campuses hiding behind their microcommunity to not enable criminal justice system access. She also cautioned that in some campus-handled cases there may be unqualified persons reviewing evidence and/or medical records and the concerns a victim may have about this happening.

There was a discussion of the involvement of FERPA, as well as a discussion of the pros and cons of allowing a victim to decide whether to pursue criminal prosecution of an alleged perpetrator. Reporting requirements were also discussed particularly where a minor or minors may be involved in an incident. Lt. Zerzan noted the importance of anonymous sexual assault tips and the crucial importance of a team and community approach. He noted there is still apparently an academic cultural reluctance to involve law enforcement in the response to a sexual assault incident and a perception that victims are treated very badly.

Heather summarized by saying that what's so interesting is how the OUS systems interface and the campus response system interfaces with the criminal justice system and/or community-based programs; that it is really different at every single campus. She opined that some campuses are doing a really good job and some of them are really struggling with the lack of interface or what

she would characterize as too overzealous of an interface. In addition, she pointed out that in some ways campuses have a greater ability to respond to a much broader continuum of inappropriate and sexually aggressive behaviors and they also have a really great continuum of consequences at their disposal.

There was a general discussion about the stance adopted by certain Ivy League institutions and the problems inherent in coping with a he said/she said scenario. Ryan Hagemann summarized by saying that what we want is to take advantage of the ability to reflect the community; the premise of this is not a criminal justice proceeding to reflect the values of the community. The consensus was that some campuses are adopting extremely conservative policies in an effort to minimize exposure to litigation.

In summary, Bridget Burns suggested she could assist with key issues arising out of this discussion, including accumulation of terminology, best practices, and finding all the status quo agreements that exist between campuses and police; Ryan added to this list the administrative rules. Henry Lorenzen suggested a survey of the campuses as to what they do, some sort of what each of the campuses are doing with regard to education, prevention, what type of student conduct proceeding they have, what assistance they may have available, and a totality of effort that goes in around sexual assault – at least to give some feel for the relative practices that are at the various campuses. There followed a brief discussion of the role and authority of the State Board of Higher Education and the Chancellor/Chancellor's Office in pursuing the resolution of issues and questions arising in this and future meetings.

In summary, key issues were identified and a plan established to begin information gathering for discussion at the next meeting.

6. NEXT MEETING, PLACE, DATE, AND TIME

Chair Van Vliet suggested that the next meeting of the Board's Oversight Committee on Sexual Assault be held during the March 2008 sequence of meetings of the Oregon State Board of Higher Education (specifically March 6-7, 2008) as the February meetings would be held too close to this meeting to be able to gather the requested materials.

With that the meeting was adjourned at 1:45 p.m.

Approved the 6th day of March, 2008.


Tony Van Vliet
Chair