



FLORIDA INTERNATIONAL UNIVERSITY
BOARD OF TRUSTEES
ACADEMIC POLICY AND STUDENT AFFAIRS COMMITTEE
MINUTES
OCTOBER 28, 2020

1. Call to Order and Chair's Remarks

The Florida International University Board of Trustees' Academic Policy and Student Affairs Committee meeting was called to order by Committee Chair Natasha Lowell on Wednesday, October 28, 2020 at 9:23 AM via Zoom.

General Counsel Carlos B. Castillo conducted roll call of the Academic Policy and Student Affairs Committee members and verified a quorum. Present were Trustees Natasha Lowell, *Chair*; Donna J. Hrinak, *Vice Chair*; Cesar L. Alvarez; Jose J. Armas, *Health Affairs Liaison (joined after roll call)*; Dean C. Colson, *Board Chair*; Joerg Reinhold; Marc D. Sarnoff; Roger Tovar, *Board Vice Chair and Athletics Liaison*; and Alexandra Valdes.

Trustees Leonard Boord, Gerald C. Grant, Jr., Gene Prescott, and Claudia Puig, and University President Mark B. Rosenberg were also in attendance.

Committee Chair Lowell welcomed Trustees and University administrators participating via the virtual environment and explained that the University community and general public were accessing the meeting via the FIU webcast.

2. Action Items

AP1. Approval of Amendments to Regulation FIU-105 Sexual Misconduct (Title IX)

General Counsel Castillo pointed out that the United States Department of Education made changes to Title IX in May, adding that immediately thereafter and through the present, the University's Title IX work group convened to discuss necessary changes and training implementation relating to Regulations FIU-105 and FIU-2501. General Counsel Castillo acknowledged the work of various departments, namely, Academic Affairs, Employee and Labor Relations, the Office of Inclusion, Diversity, Equity, and Access (IDEA), Office of the General Counsel, Student Conduct and Academic Integrity, and the Victim Empowerment Program. He remarked on the July 27, 2020 Title IX panel discussion, adding that FIU relied on the Florida Board of Governors (BOG) Emergency Regulation Procedures to present the amendments to Regulation FIU-105 Sexual Misconduct (Title IX) to the Board of Trustees on August 12, 2020. General Counsel Castillo explained that the Board of Trustees, on an emergency basis, approved the revisions to FIU-105.

General Counsel Castillo commented on the September town hall in which revisions were discussed and questions were addressed. He presented the proposed amendments to FIU-105 Sexual Misconduct (Title IX) for Committee review, referring Trustees to the agenda materials, which contain previously approved changes and additional changes made subsequent to Board of Trustees approval. General Counsel Castillo described said additional changes: the name and contact information for the interim Title IX coordinator, Courtney D. McHenry; the addition of the Presidential Review Process that permits the President to review and make a determination on Sexual Misconduct and Sexual Harassment cases to meet the goals of the Regulation; and including a definition of Violation of Supportive Measure(s). Associate General Counsel Iris A. Elijah pointed out that, beginning in May through present, the Title IX work group has collaborated to develop procedures that address how IDEA, Student Conduct, and Employee and Labor Relations would handle any matter that fell under FIU-105. She added that said procedures also discuss the different communications as well as documents that would be provided to the complainant as well as the respondent in order to ensure consistency and compliance with what the federal government has required pursuant to the Title IX regulation.

Trustee Marc D. Sarnoff thanked Senior Vice President for Academic and Student Affairs Elizabeth M. Bejar and General Counsel Castillo for engaging with him in discussions regarding Regulations FIU-105 and FIU-2501 over the course of two (2) months. He voiced concerns in that, under the guidelines, an accused person may be found responsible by a written document without the benefit of cross examination or the ability to confront the accuser or witness(es), if any. He remarked on Supreme Court Justice Amy Coney Barrett's 7th U.S. Circuit Court of Appeals Title IX opinion regarding a case that involved the relationship between two Purdue University students. Trustee Sarnoff commented that, under the proposed FIU-105, the accused can be found responsible by a written statement with never having the opportunity to request information from the accuser or to cross examine the accuser. He also voiced concerns pertaining to instances in which a witness or witnesses do(es) not appear and instead provide a written submission and also regarding FIU advancing to a proceeding before the criminal proceeding. Trustee Sarnoff commented on FIU's Army Reserve Officer Training Corps (ROTC) and referred to FIU-105's hazing definition which states that hazing includes, but is not limited to, "forced physical activity (e.g., calisthenics, line-ups, walking or marching in formation)". He added that such forced physical activity by the ROTC would be in violation of the Regulation. Trustee Sarnoff urged caution when taking actions that would deprive an accused the opportunity of continuing with their education based on a written statement.

Board Vice Chair Roger Tovar inquired as to the available legal options for addressing Trustee Sarnoff's concern regarding cross examination. General Counsel Castillo pointed out that FIU does not provide for cross examination for either party, adding that the University's procedures have been upheld by the State court. He referred to two (2) published decisions that did not involve cross examination but involved the expulsion of students for academic misconduct, stating that the court and both opinions upheld the disciplinary decision by the University through the Code of Student Conduct to expel both students. General Counsel Castillo indicated that the lack of cross examination is not a failure of the procedures, noting that it is consistent with the law and the approach taken by institutions within the State University System. He remarked that FIU is an educational institution, not a court law, and as such, the University is not required to provide that

right. He explained that BOG regulation stipulates that universities cannot wait for the conclusion of criminal proceedings. He pointed out that the University comports with due process and FIU will continue to monitor developments in the law in addition to best practices. General Counsel Castillo explained that because there was a complete collapse of due process, the court did not reach the cross-examination issue in the Purdue case.

Trustees engaged in a substantive discussion regarding Trustee Sarnoff's comments on the accused's right to cross examination. In response to Trustee Cesar L. Alvarez, General Counsel Castillo described the provision in FIU-105 for Presidential review where, under appropriate circumstances, the President can determine to become involved in the appellate portion of the process. In response to Board Vice Chair Tovar, General Counsel Castillo suggested that FIU-105 is approved as is and that that Committee or workgroup of the Board can reconvene in 60 – 90 days to address the issues raised. Trustee Sarnoff concurred with the approach of revisiting FIU-105 within 60 – 90 days, adding that he would like to be part of the review process and offered to help write a cross examination standard in which the accused would have the ability to confront the accuser and witnesses, if any. Sr. VP Bejar remarked that a cross examination may not solve a very complex and complicated issue of which the courts across the United States have dissenting opinions, noting that the University upholds the educational opportunities of all students in the highest regard and that FIU has specially trained investigators to deal with the process and procedures that are afforded to both the accused and the accuser.

Board Chair Dean C. Colson urged the Board members to read Judge Barrett's opinion, noting that allowing for cross examination will change the nature of the student disciplinary proceedings. He commented that it is critical to understand how many proceedings are held per year at FIU and recommended that the Committee should work over the next several months in order to review options that enhance the protections for all. Trustee Leonard Boord commented on the value of a friendly proceeding that did not mimic a court and did not involve lawyers. Trustee Gerald C. Grant, Jr. remarked that FIU has investigators specialized in reviewing said types of cases and that decisions to expel a student are not taken without ample investigation and analysis in order to validate the information.

Board Chair Colson motioned that FIU-105 is approved as currently drafted only until the Board's February meeting, that a subcommittee of the Board be appointed to discuss and review the different issues Trustee Sarnoff raised, and that said subcommittee present its recommendation to the Full Board in February.

In response to Trustee Jose J. Armas, General Counsel Castillo indicated that the safest course of action would be to approve FIU-105 without a deadline, but if the deadline is ultimately the pleasure of the Board, the necessary arguments will be made.

A motion was made and unanimously passed that the FIU Board of Trustees Academic Policy and Student Affairs Committee recommend to the Florida International University Board of Trustees (1) the approval of the amendment of Regulation FIU-105 Sexual Misconduct (Title IX), including the renaming to Regulation FIU-105 Sexual Harassment (Title IX) and Sexual Misconduct, (2) that the revised Regulation will be in effect only until the Board of Trustees February meeting, (3) that a

subcommittee of the Board be appointed to discuss and review the different issues Trustee Marc D. Sarnoff raised, and (4) that said subcommittee present its recommendation to the Full Board in February.

AP2. Proposed Amendments to Regulation FIU-2501 Student Conduct and Honor Code

Sr. VP Bejar introduced Assistant Dean of Students and Director of Student Conduct and Academic Integrity Michelle R. Horvath. Ms. Horvath presented the proposed amendments to Regulation FIU-2501 Student Conduct and Honor Code for Committee review. She described the previously-approved changes, specifically editorial changes; expanding the amnesty provisions under the Code; expanding the interim measures under the Code; changing the restrictions related to probation to better align with the educational and developmental aims of the document; adding (and in some instances incorporating existing language from the Code) the following as distinct violations under the Code: assisting, failure to comply, harassment, and social host responsibility; and revising the length of the notation of suspension on an academic transcript. Ms. Horvath pointed out that the following changes are now presented for approval: clarifying that when a case is ceded to adjudication under FIU-105 because of an overlap of facts between Regulations 2501 and 105, such a case may be resolved by an informal resolution or formal proceeding; incorporating language to the hazing definition to ensure compliance with BOG Regulation 6.021; and fixing scrivener errors such as alphabetizing violations which were not in alphabetical order and replacing “charged student” with “respondent”.

Trustee Sarnoff readopted a number of the comments he made pertaining to *AP1. Approval of Amendments to Regulation FIU-105 Sexual Misconduct (Title IX)*. He commented that FIU’s hazing definition includes compelling the performance of personal chores, errands, calisthenics, marching, or walking, and referenced its implication to the ROTC. Associate Vice President for Student Health and Wellness Brenezza D. Garcia pointed out that, in accordance with the BOG’s amended regulation, FIU-2501 defines that “Hazing does not include customary athletic events or similar contests or competitions or any activity or conduct that furthers a legal and legitimate objective”, adding that groups such as the ROTC would fall under that statement. Associate General Counsel Elijah indicated that FIU’s hazing definition aligns with BOG Regulation and Florida statute.

Senior VP for Health Affairs and Dean, Herbert Wertheim College of Medicine (HWCOM) Robert Sackstein, MD, referred to the section pertaining to sanctions, commenting that academic misconduct at the graduate level has a significantly different impact than it does in other academic stages. He stated that language should be incorporated to reflect that the Student Conduct and Academic Integrity Committee should be in consultation with the deans and the Dean of the Graduate School to provide guidance on the sanctions. Associate General Counsel Elijah pointed out that all accrediting bodies require each of the colleges to be in compliance with university regulations, adding that the team has worked with each of the colleges that have licensure bodies or other agencies that license them, including HWCOM to delineate what is a behavioral matter which will fall under the student conduct and honor code and what is academic in nature or what falls into professional standards.

Board Vice Chair Tovar requested that Sr. VP and Dean Sackstein be included in the group that reviews FIU-2501.

A motion was made and unanimously passed that the FIU Board of Trustees Academic Policy and Student Affairs Committee recommend that the Florida International University Board of Trustees approve the revisions to Regulation FIU-2501 Student Conduct and Honor Code, and delegate authority to the University President to approve any subsequent non-material amendments based on comments to the Regulation received from the Florida Board of Governors (BOG) or as a result of the regulation-making process and revisit the approval in 120 days.

3. New Business

No new business was raised.

4. Concluding Remarks and Adjournment

With no other business, Committee Chair Natasha Lowell adjourned the meeting of the Florida International University Board of Trustees Academic Policy and Student Affairs Committee on Wednesday, October 28, 2020 at 10:44 AM.

There were no Trustee requests.