

Exempt Staff Council Agenda  
Tuesday, May 24, 2016 – 2:30 to 4:00pm  
8th Floor Andy Holt Tower Conference Room

1. Business

- Welcome
  - ❖ John Goddard welcomed everyone to the May meeting of the Exempt Staff Council and introduced the guest speaker.
  
- Guest Speakers:
  - ❖ “Mandatory Reporter duties outlined in the UT’s sexual misconduct policy”

Jenny Richter, Associate Vice Chancellor and Director of the Office of Equity & Diversity (OED), introduced Izetta Slade, Associate Director OED. Izetta recently joined the staff at OED and has jumped right into the role.

Ms. Richter reminded the group that she was invited to speak to the council regarding the mandatory reporter duties related to sexual assault. Ms. Richter has been the Title IX coordinator for UT Knoxville since 2001. Many campuses have only implemented such roles in the last five years. UT was ahead of the curve in this manner.

Employees have certain protections under the law from sexual harassment and misconduct. The Office of Equity and Diversity handles complaints related to discrimination based on sexual harassment and misconduct. Title IX is the legislation that provides protections for students on campus. The university is responsible for providing an environment free of harassment and conducive to educational achievement.

Title IX has been in the press significantly over the past several years. Currently there are civil lawsuits that have been filed against UT as well as two complaints lodged with the Office of Civil Rights under the Department of Education. This body investigates any Title IX complaints including sexual assault. There are currently more than 200 such complaints lodged against institutions of higher education. UT managed to stay off this list for many years.

In 2014 Chancellor Cheek called a group together to review the current policy regarding sexual misconduct. The issue needed attention and the policy needed to be updated. There was input from faculty, staff, and students during this process. Definitions had to be established, for example the term consent. The processes had to be reviewed. Where do students go to report such issues and to seek help? Who are the designated parties to assist victims and when and how can confidentiality be extended?

Under this policy clarification was given as to who has a responsibility to report sexual harassment, assault, stalking, etc. when they are made aware of such instances. Stalking has become a significant issue on campus. An example is aggressive texting. A rejected individual may constantly text the person who rejected them. The stalker may even show up at the person’s place of work or study. Stalking has changed with technology. It is ever present through social media and cell phones. UT has had issues of employees being stalked by significant others who are not members of the UT campus community.

There was a need for better communication of resources available. UT Knoxville chose a website that was easy to find through online searches and was easy to remember: <http://sexualassault.utk.edu/>. If someone is searching the UTK website this is easy to find through a basic search. There is contact information for Title IX coordinators and there is information regarding who mandatory reporters are.

All exempt staff are considered mandatory reporters under the policy unless they are serving in a medical services role. An employee's supervisor is a mandatory reporter of any information shared. If a student notifies an employee about a Title IX violation there are responsibilities (for full information review appendices B & C at the end of this document). There are also mandatory reporting duties related to the Clery Act. Anyone who received training related to the Clery Act will also be a Title IX mandatory reporter. If a student or employee begins sharing information related to a Title IX violation it is best to clarify from the beginning of the conversation that certain information may not be kept confidential if you are a mandatory reporter.

Dr. Mary Lucal, Associate Vice Chancellor for Human Resources, asked if personal relationships have any impact on the reporting requirement. For example, if someone is sharing information of a Title IX violation to someone who is a mandatory reporter but is also a friend of many years does this impact the reporting mandate. Ms. Richter responded that the mandatory reporting is based on departmental reporting structure. The employee needs to assess the relationship to find whether they are required to report the information. If the employee sharing the information reports to you there is a mandatory reporting requirement. If the employee is a friend of many years who works in a different area of campus you will not be a mandatory reporter for that individual. Ms. Richter recommended that the employee be up front about the possible requirement. For example, "Are you telling me about something bad that happened to you or about a sexual assault? I want to make sure you understand that I may have to do something with this information. I am happy to keep confidences as I am able, but I will have to report certain information due to my role in the department." This can be difficult, but the purpose is to clarify so that the employee is not surprised by the fact you may have to report the misconduct that occurred. Ms. Richter shared that in her role no one has ever stopped sharing information due to this statement. The employee is likely ready to take action if they are sharing the incident. It is difficult especially when the victim is a friend, but it is the best way to deal with this difficult situation.

Mary Anne Hoskins asked for clarification regarding the requirement. The requirement lies in the person who is the victim and not whether the alleged perpetrator is a campus citizen as she understands. Ms. Richter stated that this is correct. The purpose of the reporting is not for the reporting individual to investigate or make judgements. The purpose is to assist the employee or student with medical and other needs as soon as possible. The mandatory reporter shall encourage the individual to report the incident to the police. The mandatory reporter shall report the incident to UT. OED should be notified (974-2498 or come to 1840 Melrose Avenue) of employee incidents. For student issues 974-HELP(4357) can be called to notify of the incident.

Molly Beth Kinard asked what a mandatory reporter should do if students report incidents of behavior that fall under Title IX but are not seeking or requesting assistance. Ms. Richter encouraged employees to contact OED for guidance and assistance. OED may follow up with the

individual after assessing the situation. An investigation can take place and provide the best course to address the possible misconduct. Also, with instances involving a minor the issue may be considered child abuse and require certain state procedures to be followed (call 877-237-0004 or go to <https://apps.tn.gov/carat/>).

The Clery Act notification emails sent out after reports of incidents often includes the statement, "individual does not wish to pursue." This can be frustrating but situations may still not end there. Resources are made available to the victim. Even if legal action is not taken there is a student judicial process that some victims follow through on. Students can be expelled from UT for violations of Title IX. Sometimes it may take time for the victim to recover and address their options.

Contact OED if you are aware of issues or incidents occurring. Employees should not try to resolve these issues on their own. OED can investigate and properly address the situation.

There are resources available at the <http://sexualassault.utk.edu/> website including training videos regarding mandatory reporters and student resources (<http://sexualassault.utk.edu/on-campus-support/>). These videos contain the basic information and can be a helpful start for employees with questions.

If confidentiality is desired by the victim there are certain individuals who are not considered mandatory reporters that they can seek out. Employees of the counseling center, student health center, religious leaders, and employees of the sexual assault crisis center (not part of UT) are not considered mandatory reporters and can keep information confidential. Another resource for UT employees is the Employee Assistance Program (EAP) which is a free and confidential service. EAP can be accessed by calling 1-855-437-3486 or going to [www.Here4TN.com](http://www.Here4TN.com).

Judy King asked if there were training available for students who are new to campus regarding harassment issues and other Title IX violations. Ms. Richter shared that such training is currently woven into the orientation process and programs and assessments are completed prior to their coming to campus. Welcome Week and online assignments prior to the commencement of the semester incorporate such training. The Center for Health Education and Wellness (CHEW) also equips students to train other students in these matters. The first weeks of the fall semester are referred to as the Red Zone due to the number of male and female victims of relationship violence, harassment, stalking, etc. Ideas and thoughts are welcomed by OED for different ways to communicate and education the campus community.

Deanna Flinchum asked how UT can address stalking carried out by persons outside the campus community. Ms. Richter answered that only instances of stalking that take place on campus can be addressed by UT. Digital stalking is difficult to address and victims are encouraged to contact local law enforcement for assistance. Ms. Flinchum shared that there was an instance in the past of a son stalking his mother at work. Ms. Richter shared that UT has a limited ability to assist in such cases. Access to campus can be limited and the police can be involved.

Rex Barton asked for clarification regarding which instances should be reported. If the Title IX issue occurs outside of work by an individual who is not a campus citizen should the instance still be reported? Ms. Richter stated that it should be reported. UT will have limited ability to

penalize the alleged perpetrator, but resources can be extended to the victim and law enforcement can be notified.

John Goddard asked what can be done with second hand information which could be considered hearsay. Ms. Richter answered that such circumstances may involve two mandatory reporters. OED can follow up with the student or employee regarding the incident. It is best to respond to information received regarding possible instances of Title IX violations. Acting in such situations is vital to make sure that issues are addressed properly and resources are made available to those who need them. Dr. Lucal shared that this is similar to the 946-CARE(2273) line which is a staff resource similar to 974-HELP for students. It is better to reach out and provide an opportunity for an employee to receive help should they need it.

Eric Carr asked what the penalty is for a mandatory reporter not following through. Mr. Carr also inquired about the data collected and how it is maintained. Mr. Richter shared that if a mandatory reporter is found to have neglected their duty OED will meet with the individual to clarify the role and expectations. Disciplinary action is possible under the policy, but education is preferred as it produces a better outcome at this time. Discipline would only be used for egregious or repeated non-compliance by an individual. An example would be if a student sent an email to three faculty members and only one reported the Title IX violation shared. Departmental training is available and has been extended to areas where the need is greatest. The information collected by OED in their investigations is logged for departmental records and maintained in house.

Donna Spencer asked if online training was available all the time or if the training made available after the policy came into effect was time sensitive. Ms. Spencer added that the training was very helpful. Ms. Richter shared that the training referenced is available through the UT System and is not specific to UT Knoxville and its processes and practices.

Rex Barton asked if the policy was a UT System policy or a UTK policy. Ms. Richter answered that the policy is specific to UTK and UTIA.

Judy King shared that her office is located next to a dorm. Employees sometimes overhear conversations about personal issues that can be related to Title IX. Ms. King urged her fellow employees to think of students as if they were a relative or friend and react accordingly. Ms. Richter shared that from experience students expect follow up from individuals in authority when they share such information.

OED is always happy to answer questions or assist as possible. Please refer to the document following the minutes for contact information.

#### ❖ “Fair Labor Standards Act (FLSA) Changes”

Dr. Lucal began by introducing the newest member of the Human Resources team. Julie Hunt, Executive Director of Compensation and Records, comes to UT from William & Mary. Dr. Lucal is excited to have her on board and working with the FLSA changes.

Dr. Lucal shared that the final announcement was made last week. The final rules were 508 pages long. A communication plan has been prepared, but the information will need to be reviewed and assessed before any significant announcements are made. The new threshold was set at \$47, 476. This is roughly double the previous threshold but not as significant as initially expected.

Another change from the initial proposal was the implementation deadline. Instead of a 60 day implementation employers will have until December 1, 2016 to implement the changes. This is a better timeframe for adequate review of the requirements and decision making based on those requirements.

Another significant change relates to the evaluation schedule of the threshold. The proposal included an annual evaluation process to adjust the threshold based on the 40<sup>th</sup> percentile of the National Salary Survey based on the lowest scale region, currently the South. The final rule requires evaluation every three years beginning in 2020.

There were some higher education specific exemptions extended. This and other aspects of the rule are being reviewed and interpreted by UT and other employers across the country. Announcements will be coming. UT Administration and Human Resources are working extensively on this issue.

Brian Browning shared that raises are likely this year but that the percentages are undetermined at this time. Dr. Lucal added that with the deadline now December any raises may affect the threshold for some employees and resolve the exempt or nonexempt status. There are approximately 450 positions currently under review at UT Knoxville.

Judy King asked if the changes would be implemented by December. Dr. Lucal answered that UT would be ready to meet the December 1<sup>st</sup> deadline.

A training team is planning and preparing for the needs of UT. Now that the numbers and details are available training is being tailored for supervisors of affected employees and affected employees. Supervisors will need assistance and information as they prepare to discuss these changes with affected employees. There are many issues from travel policies for nonexempt employees to not checking weekend email as an hourly employee that will need to be addressed. Ellie Amador, Assistant Director of Communications, is working on a website which will be available soon and will have resources available (UPDATE: <http://tennessee.edu/flsa/>). Dr. Lucal stated that ESC representatives would benefit from training regarding these changes. Human Resources may request individual training for the ESC.

John Goddard asked if the changes would be decided on a system-wide basis or by campus or institute. Dr. Lucal answered that all of UT is affected but the decisions regarding reclassification will need to be assessed and based on campus situations and needs. Julie Hunt added that there is a possibility that some employees may be reclassified to non-exempt even if they are over the threshold based on other criteria but this change is not likely for most employees.

Eric Carr asked if employees affected by the changes would be changing their benefits in December. Dr. Lucal shared that retirement plans will not be affected by the change. Annual

leave is the most significant benefit affected with the change due to different accrual rates for exempt and nonexempt staff. There is a possibility that long-term disability could be affected as the contract is currently up for bid.

Dr. Lucal stressed that UT has been through other changes in the past due to state and federal rules and regulations. UT will make it through this process and will comply with the federal requirements. Julie Hunt stressed that every employer in America is affected by this change and is going through similar procedures to comply.

❖ “Delayed ESC Elections”

Dr. Lucal distributed letters to the representatives present at the meeting. The letters were prepared to notify ESC representatives of the delay in the election process due to the FLSA changes and their impact on constituent lists.

Dr. Lucal encouraged representatives who may need to rotate off the ESC to contact John Goddard or P.J. Snodgrass so that they can begin the process of finding a new representative.

Eric Carr asked about the bylaws and the requirement of a vote to approve the change in election dates. Deanna Flinchum answered that the temporary change of the election cycle was approved by vote by the ESC at a previous meeting. If a permanent change is desired in the bylaws the council will need to follow up on this at a later date. John Goddard added that the bylaws are posted on the ESC website (<http://web.utk.edu/~esc/>). The bylaws will be reviewed to confirm the appropriate process should the election dates need to be changed moving forward.

- External Commission Reports
  - Campus Planning –LaShel Brown
    - ❖ LaShel Brown was unable to attend but provided handouts from a recent meeting (see attached after minutes).
  - Commission for Blacks—Judy King
    - ❖ Judy King shared that the commission will have three co-chair positions. Nominations were received for the co-chair role. The commission have been meeting with campus administration regarding issues on campus. Students want a collaboration with their groups and the commission due to a feeling that many of their demands were denied by the administration.
  - Commission for Women-Teresa Fisher
  - LGBT Commission-Eric Carr
    - ❖ Eric Carr shared that the commission will have no meetings during the summer. The legislatures defunding of Diversity was discussed. This will come into effect in June.
  - Faculty Senate-PJ Snodgrass
  - Work Culture Improvements-Brian Browning
  
- Announcements

- Issues/Questions from constituents
  - ❖ Judy King raised the issue of parking at the Locust Street garage for Conference Center Building employees. There have been issues with employees not being able to find spaces and also access issues with the garage. The city of Knoxville has an agreement with UT that 330 spaces should be reserved. Issues have been reported to Parking Services. Employees were encouraged to consider the 11<sup>th</sup> street garage as there are not issues of lack of spaces and the cost is less. Deanna Flinchum added that the access and egress issues are due to the fact that the daily parkers block the exit for the monthly parkers which backs up the garage. Waits of up to 45 minutes have occurred because of this. There is a communication issue as employees are often not aware of downtown events or even Conference Center events. Brian Browning stated that the garage is owned by the city, so UT does not have much say in the garage. The garage has some design flaws which do cause delays. UT Conferences should be sharing information regarding events so that employees can prepare for such delays. UT has less control over city events in downtown which can cause the garage to fill.
  
- Future Business
  - ❖ John Goddard shared that the Employee Relations Advisory Organization is planning a meeting to discuss the changes to legislation regarding guns on campus (UPDATE: as shared via the ESC listserv the ERAO met June 16<sup>th</sup> with Chief Troy Lane to discuss the changes to legislation. Minutes will be shared with the group for those unable to attend).
  - ❖ Lisa Byrd shared that Worker's Compensation will be sending a representative to discuss changes to CorVel, UT's contracted provider, and their practices.
  - ❖ UT Student Health Center Pharmacy will be sending a representative to share information regarding the services offered.
  - ❖ The July meeting of the ESC will be in the form of a tour of Neyland Stadium. The tour will begin at Gate 21 and will last approximately 45 minutes. This will be in lieu of a meeting.

### 3. ESC Committee Meetings

- Nominating/Orientation
- Communications/Website
- Advocacy/Education

4. Next meeting –Tuesday, June 28<sup>th</sup>, 8<sup>th</sup> floor conference room, AHT