

Memorandum

4 August 2017

To: Senate Council

From: Members of the Ad Hoc Senate Council Committee Regarding AR 6:2 (Chair: Jennifer Bird-Pollan; Members: Garrett Bell, Jeffrey Bosken, Alice Christ, Diane Follingstad, Davy Jones, Willis Jones, Beth Kraemer, TK Logan; Participants: Martha Alexander, Marcy Deaton)

Our Committee has considered the draft questionnaire that the University of Kentucky administration has proposed to ask new employees to complete. While our Committee is, in principle, in favor of developing a mechanism aimed at uncovering a history of sexual harassment or sexual assault with regard to potential employees, we have a few comments regarding the existence of the questionnaire, and its content. At the heart of the response our Committee has to the questionnaire is a worry that the questionnaire may result in prejudice against potential employees who indicate that they have been accused of sexual assault or sexual harassment in a previous position. While an actual finding of responsibility or criminal conviction would be information that the University of Kentucky could reasonably ask about, our Committee worries that the question on the draft questionnaire asking about “pending proceedings” would lead to discrimination against the potential employee on the basis of mere allegations.

Echoing the concerns our Committee had about the sexual assault and sexual harassment procedures in AR 6:2, which motivated the amendments our Committee suggested regarding that Regulation, our Committee believes that the proposed questionnaire may unintentionally violate the due process rights of potential employees. An individual accused of sexual assault or sexual harassment as a University employee may decide to leave his or her current employment for any number of reasons. If the University of Kentucky asks about such accusations, even in situations where the accusations did not rise to the level of a proceeding or determination of responsibility, the accusations themselves may result in the individual being denied the possibility of employment at the University of Kentucky without having been given due process.

The Committee believes that the questions presented on the questionnaire should be limited to asking if the applicant had ever been held responsible as a result of a campus or criminal proceeding, or if the applicant signed a document acknowledging responsibility for sexual assault or sexual harassment. Limiting the questionnaire in that way would ensure that no prospective employees would be subject to potential punishment without due process.

An alternative possibility would be including a list of prohibited offenses under AR 6:2 on the questionnaire. After identifying what actions are prohibited at the University of Kentucky, under our Administrative Regulations, the questionnaire could ask prospective employees whether or not they have ever engaged in activity that would have violated AR 6:2. This question has the advantage of placing the burden on the

applicant to affirmatively report his or her behavior, rather than asking about proceedings or accusations that may have taken place at the applicant's previous institution.

In addition to the Committee's concerns about a prospective employee's due process rights, we also note that parts of the proposed questionnaire are redundant when considered with other forms that prospective employees are required to complete. Human Resources at the University of Kentucky completes a background check on all new hires that would indicate whether or not the individual had been charged with or convicted of a crime, which seems, to the Committee, to obviate the need for questions 1 and 2.

Finally, the Committee thought it was important to clarify when this questionnaire would be completed by the prospective employee. Does the administration anticipate that this questionnaire would be completed as part of all applications? Or would the questionnaire only be required if the applicant was offered an interview? Alternatively, would the questionnaire only be completed once the applicant was offered the position? The Committee does not have strong views about the appropriate timing of the questionnaire, but believes that the administration should consider the goal of the questionnaire before deciding when to ask potential employees to complete the questionnaire.

The Committee believes that finding a way to protect individuals on campus from sexual violence, while still protecting the due process rights of potential employees is an important balance to strike. The Committee encourages the administration to consider the prospective employee questionnaire in light of this balance.