

EQUITY, ACCESS, AND DIVERSITY COMMITTEE (EAD)

November 30, 2015

Minutes of the Meeting

[These minutes reflect discussion and debate at a meeting of a committee of the University of Minnesota Senate; none of the comments, conclusions, or actions reported in these minutes represent the views of, nor are they binding on, the Senate, the Administration, or the Board of Regents.]

[In these minutes: Martin Luther King Jr. Day Update; Parental Leave; Sexual Assault and Whistle Blowing]

PRESENT: Chair Deena Wassenberg, Jeremy Jenkins, Jude Fom, Abbe Holmgren, Teddie Potter, Ann Burkhart, Kimberly Hewitt, Priscilla Flynn, Solomon Gashaw

REGRETS: Naty Lopez, Keisha Varma, Kamaori Xiong, Tyler Lande

ABSENT: Katrice Albert, Patrick Dean, Richard Graff, Shailey Prasad, Jeremy O'Hara

GUESTS: Shakeer Abdullah, assistant vice president, Office for Equity and Diversity; Katie Eichele, director, Aurora Center

OTHERS ATTENDING: NONE

Chair Deena Wassenberg welcomed members and each member provided a brief introduction.

1. Martin Luther King Jr. Day – Wassenberg explained that Shakeer Abdullah, assistant vice president, Office for Equity and Diversity (OED), was in attendance to discuss the University's activities regarding Martin Luther King Jr. (MLK) Day. Abdullah introduced himself and said the University had no collective approach to MLK Day. He said activities were very multifaceted and that OED hosts a concert each year. He said this year's concert is on January 21, from 6:00 pm – 7:30 pm at Ted Mann Concert Hall and the a cappella group, Committed, was headlining. He said tickets are free, open to the public and on a first come, first served basis. The date of the event was moved from the Sunday before MLK Day to Thursday, giving students an opportunity to attend. OED is trying to steer the event from having an external, community focus to being more student focused. He said the Minnesota Historical Society would be represented at the concert with a booth featuring contests and games to engage students in MLK Day. Abdullah said there would be other events in the community and on campus to celebrate MLK Day, as well. He said diversity.umn.edu/mlktribute offers details for the concert and a link to the other community events. The website also has information regarding various days of service around the community held in honor of MLK's legacy. He said University Housing and Residential Life is hosting a social justice retreat the weekend of the MLK celebration. Abdullah said OED hosts a table at the annual General Mills MLK Day Breakfast, as well.

Wassenberg asked if OED was exclusive to the Twin Cities campus. Abdullah responded that OED is system-wide and each campus has its own office with staff. He noted that he made a recent visit to the Rochester campus, where there is an active group of students working in the

area of diversity. He said each campus manages their own OED calendar and set of activities. Wassenberg expressed concern that when MLK Day activities for the University are Googled, the results are poor. One link she found, she said, was a list of campus offices that are closed on MLK Day. She has heard that others have had difficulty finding activities to participate in as well. She questioned whether it was a technology issue with how Google populates information, or an issue of there being a lack of activities occurring. Abdullah responded that there is no day of service sponsored by the University and the tribute concert is not on MLK Day proper, which might skew results.

Professor Teddie Potter asked if the committee could request that One Stop feature something about MLK Day in January on its homepage. Wassenberg agreed and expressed concern that people outside the University would not see scheduled activities if they perform only a basic Google search. Abdullah said there is a campus climate working group, which is a repository for everything related to the campus experience, and that website might be a good place to list MLK Day activities. Potter reiterated that One Stop is the best place to grab people's attention to alert them to which page to visit for information. Wassenberg said linking to system campuses would be worthwhile. Ms. Abbe Holmgren suggested placing links on the MyU page, as well.

Mr. Jude Fom, a student at the Crookston campus, said that MLK Day is on his calendar, but there are no corresponding activities. Abdullah said in the past, Crookston worked with the University of North Dakota to collaborate MLK Day activities. Wassenberg concluded that since the next meeting is not until February, she would circulate a letter to the members expressing that the committee would like communication regarding the events for MLK Day to be increased and better coordinated. She asked if the committee was interested in pursuing organization of a day of service. Flynn asked Abdullah for his thoughts on holding a day of service for MLK Day. He responded that it needs careful thought and consideration because of the amount of planning involved. He acknowledged that one obstacle to overcome is getting students to participate. He did not feel there was enough time to plan a day of service for MLK Day in 2016. Wassenberg said partnerships would be needed to create an effective University-wide day of service.

2. Parental leave - Wassenberg explained multiple committees have concerns regarding varying aspects of University's Parental Leave Policy. She said the concern for EAD is the potential for discriminatory hiring practices against women in research positions due to the financial burden paying for parental leave places on research grants. Wassenberg said grants that provide research funding do not include funding for potential parental leave, causing a strain on the budget.

Kathryn Brown, vice president, Office of Human Resources (OHR), introduced herself and said she would provide an overview of the University's policies concerning parental leave. She explained that faculty members and P&A employees receive two weeks of parental leave and the birthmother has the option to use up to four weeks of sick leave. She said P&A employees and faculty do not have a set bank of sick leave; it is open ended with no accrual. While civil service (CS) employees are entitled to the same parental leave as P&A employees and faculty, CS employees accrue sick leave. If CS employees do not have enough accrued sick leave, they are able to use vacation time. Brown said labor represented employees work under a union contract

and receive the same parental leave as other employee groups, two weeks of paid parental leave and four weeks of accrued sick or vacation time for the birth mother. She said in all cases, the Family Medical Leave Act (FMLA) applies to all employees and offers up to 12 weeks of time. Under FMLA, accrued sick, vacation time, or unpaid leave available can be used with the assurance that the employee's job will be protected in their absence. Brown said OHR has heard that several groups are concerned that CS has to use accrued sick and vacation time while P&A employees and faculty do not. OHR is taking a hard look at the policy, she said. Brown also noted that labor represented employees are currently in contract negotiations and she could not discuss anything regarding those discussions.

Brown said that in terms of researchers, everyone the University hires is classified as a CS, P&A, faculty, or labor represented employee and those terms of employment pertain to the employee. This means all researchers are entitled to parental leave according to their classification. Brown said that if an employee is a CS or P&A employee, they have the option to consult OED if they feel they were discriminated against based on gender. Employees could also go to the Office of Dispute Resolution. She offered that employees could go to OHR, but OHR does not have the authority to tell a unit or department that they must follow the policy.

Brown said it is unacceptable to claim a grant cannot pay for parental leave and that because it is University policy to provide leave, units and departments must account for it in their budget. Brown said she spoke with Pamela Webb, vice president, Research, who said the lab's department is typically able to assist with funding or the grant funding can be restructured to account for parental leave. Brown said the grant agency could be contacted in some circumstances to ask for more time to complete the project. Brown said if there is trouble with obtaining parental leave, the problem is not with the policy itself, but rather with how the policy is being implemented by management. Professor Ann Burkhart said that one concern is that the difficult nature of budgeting time and money for an unplanned pregnancy can foster resentment and a hostile work environment. This work environment is the purpose behind the SRC resolution calling for parental leave to come out of the University fringe pool, she said. Brown responded that the factual problem with paying parental leave from the fringe pool is that it creates accounting difficulties. She said there is no way to separate grant money payments from other types of payments made to individuals out of the fringe pool. Fringe pools are a finance issue, and not in OHR's jurisdiction, she said. OHR's jurisdiction is the policies and procedures related to parental leave, and they are clear on what employees are entitled to, Brown reiterated.

Wassenberg said a concern brought to the committee was an employee in a small unit having to do the legwork to find their own method of funding their parental leave. Brown responded that such a situation violates University policy. She said employees are not responsible for finding the funding for their parental leave; that duty lies with the supervisor. Burkhart asked if a solution would be adequately training supervisors. Brown explained that OHR offers training for supervisors called "leadership and talent development." The initial level of training is at no costs and focuses on policy compliance. The second level focuses on people management and higher levels of thinking around leadership and strategic planning, she explained. Mr. Jeremy Jenkins said the issue might be in the application of the policy. He suggested approaching research associate deans to articulate that it is the expectation of the University that parental leave policy

is accurately implemented. Brown said she would be happy to approach the deans to discuss policy implementation.

Wassenberg asked where funding would come from for a research employee who becomes disabled while working under a grant. Brown said disability is very different from parental leave and many factors affect it. She said FMLA allows 12 weeks away from work while protecting the employee's job for a short-term disability. Brown said there is no standard way of handling these issues, and it is an issue of proper application.

Ms. Kimberly Hewitt asked if there was a "parental leave guru" in OHR that employees could go to if they are unhappy with the information they receive from HR leads in their department. Brown responded that OHR work is not divided up in such a manner, but OHR can help refer employees to the next step to take. Hewitt said OED would more than likely go to OHR to ask how to enforce policy. Brown said OHR would work with OED on specific issues. Wassenberg said the committee has been made aware of the perception that the cost of parental leave has the potential to make women targets for being laid off or not hired because funding parental leave creates a budget burden. Brown responded that state and federal law makes such hiring and employment practices impermissible. Hewitt said suspicions of layoffs due to age and pregnancy issues would go to OED.

Brown thanked the committee for their time and the discussion continued after she left. Burkhart asked members if they want to move on with supporting this issue. Wassenberg said she would like to continue with it. She said her concern is that the committee previously had a guest who reported that with her pregnancy, she had to find her own source of parental leave funding and OHR was unsure of how to handle leave funded by grant money. Flynn said she thought the problem was situational and Brown contacting the research associate deans to emphasize they must implement the policy could be enough to solve potential problems. Jenkins said the problem is the ambiguity of the policy. He said the policy does not specify where the money for parental leave will come from, even though it says all employees are entitled to receiving paid leave. This ambiguity allows the responsibility for funding parental leave to be bounced around, and is why he suggested following up with the deans, he said. Holmgren said understanding best practices around this issue would be helpful to properly define the parental leave funding source in the policy. Wassenberg said from the contract's perspective, leave comes out of the money allowed for overhead costs. Flynn was concerned EAD does not have jurisdiction to determine where parental leave funding originates from. Wassenberg agreed but reiterated the committee has the jurisdiction to ask that the OHR parental leave policy clearly defines parental leave funding sources so potential discriminatory hiring practices and hostile work environments can be avoided. She said the ambiguity in the policy could lead to a culture of viewing women of childbearing age in a negative light.

Wassenberg will attend the next Senate Research Committee meeting because University Finance and Budget would be in attendance to discuss the fiscal implications of moving parental leave to the fringe pool. Wassenberg said she would email Brown to express that members feel this is an issue of clarifying the policy and they would like her to follow up with the deans to ensure they understand the policy.

3. Sexual assault and whistle blowing – Wassenberg explained Burkhart brought information about a sexual assault case that occurred in Oregon to her attention. Wassenberg invited Burkhart to present information on the case and handouts were provided to members.

Burkhart explained a sexual assault occurred at the University of Oregon and that the accused individuals and the victim were students. The victim sued the University of Oregon claiming her claim was not processed properly. The University of Oregon obtained her counseling records and used them in their defense against her suit in court, Burkhart said. Burkhart explained HIPAA laws do not apply to student medical services. The Family Educational Rights and Privacy Act (FERPA) covers student medical records with the exception that student records are not private if a student sues their college or university. Burkhart said the Department of Education sent a “Dear Colleague” letter about this issue. The letter is not legally binding but acted as a guide on how to interpret FERPA. Burkhart said the vague guidance and failure to provide protections for students in the letter moved her to invite Katie Eichele, director, Aurora Center, to meet with the committee to discuss University policies related to confidentiality of medical records.

Eichele said when this case occurred she connected with University Office of General Counsel (OGC) and the Minnesota Coalition Against Sexual Assault. She said the Minnesota Coalition Against Sexual Assault put her in contact with the Confidentiality Institute, which is a national organization examining the University of Oregon case and the difference between HIPAA and FERPA. Eichele said there is no federal law prohibiting the release of the confidential documents in question. She explained that Minnesota does, however, have comprehensive laws around confidentiality regarding domestic violence and sexual assault. Minnesota statute 595.02 defines who has to follow confidentiality rules. Eichele said sexual and domestic abuse counselors fall under this statute. The question in the University of Oregon case was who actually owned the student’s medical records. Eichele said she asked OGC to clarify how the University viewed confidential student medical records. She worked with Tracy Smith in OGC to craft Aurora Center Confidentiality Policy language that followed both Minnesota law and University policy. The handout can be found [HERE](#). The policy covers anyone using the Aurora Center including students, staff, and faculty. She noted that there are programs and offices on campus that offer confidential services, but the records would be eligible for examination if a lawsuit occurred.

Burkhart asked Eichele what the committee could do to support the Aurora Center. Eichele said reaching out to OGC to see if it is moving forward with creating an internal document addressing the University Confidentiality Policy and asking for a copy of the document would be helpful. Burkhart said she would draft a letter to Tracy Smith in OGC to send once the committee and Eichele approves it.

Burkhart asked if the committee had an interest in discussing the Office of Conflict Resolution’s (OCR) investigation into Title IX. Members discussed the concerns that initiated the investigation and Hewitt explained the Advisory Committee on Athletics, among others, has jurisdiction over athletics issues. Hewitt said the committee could monitor the Title IX concerns in the Athletics Department, but athletics have plenty of oversight and EAD involvement could be redundant. She suggested the committee brainstorm issues they would like to look into during

the spring that are not on any other committee's radar. Hewitt said she knew of a group advocating for the creation of a University policy regarding support for trans identifying individuals on campus in both employment and education. She thought that would be an interesting topic to learn more about. Wassenberg said Stef Wilenchek would be invited to an upcoming meeting since they were involved in the issue.

Hearing no further business, the meeting was adjourned.

Avonna Starck
University Senate Office