

**FACULTY COUNCIL**  
**Tuesday, October 13, 2020**  
**3:30 – 5:15 pm**  
**Zoom**

**MINUTES**

Councilors Present: D. Andersen, C. Bradley, N. Brogden, J. Buckley, M. Cunningham-Ford, A. Gerke, B. Janssen, L. Joseph, M. Kivlighan, A. Merryman, N. Nisly, G. Russell, C. Sheerin, T. Treat.

Officers Present: T. Marshall, A. Rodriguez-Rodriguez, J. Yockey.

Councilors Excused: L. Glass, M. Pizzimenti.

Councilors Absent: L. Erdahl.

Guests: J. Anthony (Governmental Relations Task Force), M. DiCarlo (Office of Sexual Misconduct Response and Title IX Coordinator), L. Geist (Provost's Office), D. Johnsen (College of Dentistry), H. Mineart (Staff Council), J. Modestou (Office of Equal Opportunity and Diversity), C. Wanat (Emeritus Faculty Council), L. Zaper (Faculty Senate Office).

I. Call to Order – President Yockey called the meeting to order at 3:30 pm.

II. Approvals

- A. Meeting Agenda –Professor Treat moved and Professor Russell seconded that the agenda be approved. The motion carried unanimously.
- B. Faculty Council Minutes (September 1, 2020) – Professor Russell moved and Professor Nisly seconded that the minutes be approved. The motion carried unanimously.
- C. Draft Faculty Senate Agenda (October 27, 2020) – Professor Nisly moved and Professor Sheerin seconded that the draft agenda be approved. The motion carried unanimously.
- D. Committee Appointments (Teresa Marshall, Chair, Committee on Committees)
  - Silvia Secchi (Geographical & Sustainability Sciences) to replace Heather Sander (Geographical & Sustainability Sciences) on the Sustainability Charter Committee, Fall 2020
  - Anya Prince (Law) to fill the unexpired term of Brian Kaskie (Health Management & Policy) on the Funded Retirement and Insurance Committee, 2020-21
  - David Drake (Dows Institute-Dental Research) to fill the unexpired term of Jane Paulsen (Psychiatry) on the Research Council, 2020-21
  - Sohit Kanotra (Otolaryngology) to fill the unexpired term of Janette Taylor (Gender, Women's & Sexuality Studies) on the Charter Committee on Diversity, Equity, and Inclusion, 2020-22

Professor Nisly moved and Professor Russell seconded that the committee appointments be approved. The motion carried unanimously.

### III. New Business

- *Diversity, Equity, and Inclusion Recommendations from Governmental Relations Committee (Jerry Anthony, Chair)*

Professor Anthony explained that a special task force was created out of the Faculty Senate Governmental Relations Committee in June. The charge to the task force was to develop solutions for diversity, equity, and inclusion (DEI) programming on campus that could be implemented quickly. The original intention was to have projects in place by the beginning of the fall semester. However, there was also a realization that inclusiveness in the review of the ideas generated was necessary, which led to a slower pace of progress. Initial input on the list of these ideas was received from the members of the full Governmental Relations Committee. The task force then sought out other individuals and groups for feedback and support, including the Iowa City Manager and Assistant Manager; the Dean of Students; the Vice President for Student Life; officers of the other shared governance bodies (Staff Council, Undergraduate Student Government, Graduate and Professional Student Government); the Director of Diversity Resources in the Division of Diversity, Equity, and Inclusion; and the Interim Associate Vice President for Diversity, Equity, and Inclusion. Input has also been sought from the Diversity Councils. As a result of all these meetings, the list of proposed ideas was modified.

Professor Anthony then described the ideas, divided into three categories, proposed by the task force. Under the category of university-wide projects, the task force proposed that election day be a day with no classes, but with self- and collective-reflection about the nation and pertinent issues of the time; that faculty be encouraged to have a DEI component to all courses, with resources provided by the university; and that a DEI-themed week take place each fall (similar to the Earth Week in spring), with DEI programming during and outside of classes. The second category of projects pertained to actions by central and local administrators, faculty, and staff. These ideas included required annual assessments of implicit bias using a standard online tool and required DEI training every five years on overcoming implicit bias and having difficult conversations. The third category was comprised of projects that would impact students. Students would be strongly encouraged to take a no-tuition, no-credit, pass-fail race-relations course for which they would write a reflection paper; to take a no-tuition, no-credit, pass-fail race-relations film course for which they would also write a reflection paper; and to do an internship at a non-profit organization that serves low-income or diverse populations and then write a reflection paper, with low-income students receiving some reimbursement for potential lost wages. Another student-focused project would be the establishment of a social justice certificate, separate from the social justice minor currently offered by the College of Liberal Arts and Sciences and with less formal requirements, such as internships, projects, etc. Also, student organizations would receive funding for carrying out small DEI-related projects in the wider community and would then report back to the campus community about these projects. Similar to faculty and staff, students would take an implicit bias course, at least twice in their academic careers (students already do this once). The final project, one strongly advocated for by students, was the establishment of a more accessible process to report faculty or staff for perceived violations of DEI principles.

President Yockey commented that many of these ideas would require much greater elaboration with a variety of offices on campus. This is a high-level overview of major strategic priorities that emerged from the dialogic process that Professor Anthony described. Some of these ideas may be relatively easy to implement. Others, like the student internship program, would require a lot of work, so it is necessary to determine the level of enthusiasm for such ideas before proceeding with implementation. Professor Treat thanked Professor Anthony for the extensive work that he and his task force had carried out. She indicated that she is a faculty member in the Department of Psychological and Brain Sciences and noted that measures of implicit bias come out of psychological traditions. She commented that there are many concerns about the validity of those measures; what they really track is the extent to which people naturally make associations between, for example, certain races or ethnicities and positive or negative terms. If one makes certain associations, she continued, it does not necessarily mean that one harbors some sort of malice or explicit negative attitudes towards certain groups of people. Professor Treat added that results of implicit bias measures can be over-interpreted to mean things that are not supported by evidence. She suggested that any implicit bias measurement instrument be paired with reflection on actual behavior, because it is behavior that matters most.

Professor Nisly commented that the concept of unconscious bias is widely taught in health care fields, in an effort to reduce health inequalities. She noted that it has been well documented that some populations have worse outcomes than others after interactions with the health care system. Professor Nisly explained that students in health care fields are taught that everyone acquires unconscious associations over the course of one's lifetime. Students learn to be aware of these associations and their potential impact on a patient's health care. They are taught to spend time making sure that they are making the best decisions for patients. Taking an unconscious bias assessment is an opportunity for reflection and Professor Nisly hoped that this suggestion would remain on the list. Professor Treat emphasized that she was not advocating for its removal, but for the nuances of the assessment to be recognized.

Professor Janssen commented that, in general, she was in favor of the items on the list and she thanked Professor Anthony and his task force for developing them. Commenting on the proposed social justice certificate, she noted that social justice is a field that requires deep, long-term engagement. She expressed the hope that the certificate requirements would ensure depth and rigor, especially if work with community-based organizations is a component. Professor Joseph also praised the good and thorough work of the task force. She commented that students might feel overwhelmed with so many choices of DEI-related activities. Professor Anthony responded that the student leaders he had spoken with were enthusiastic about having a large number of activities from which to choose. President Yockey indicated that the Council could further discuss and refine the list of activities through email before the list is presented to the Faculty Senate for approval. He noted that approval by the Council and Senate of this list would not be binding on the university; rather, the list would take the form of an idea statement presented, perhaps in conjunction with the other shared governance groups, to administrators for their consideration.

- *University Response to Executive Order on Diversity Training (Jennifer Modestou, Director, Office of Equal Opportunity and Diversity)*

Ms. Modestou indicated that she intended to describe Presidential Executive Order 13950, issued on September 22 by President Trump; to explain the university's response; and to address the numerous questions that remain about the Executive Order (EO). She noted that the EO applies to federal contractors, federal agencies, and federal grant recipients. The university is both a federal contractor and a federal grant recipient; the latter category includes students who receive Pell Grants. The EO prohibits training that *inculcates in its employees any form of race or sex stereotyping or any form of race or sex scapegoating*. The EO further prohibits eight "divisive concepts" from being included in employee training. Ms. Modestou stressed that the EO focuses on training that is provided to employees of a contractor or grant recipient. She provided a link to the EO, <https://www.federalregister.gov/documents/2020/09/28/2020-21534/combating-race-and-sex-stereotyping>.

Ms. Modestou went on to explain that the EO defines race or sex stereotyping as *ascribing character traits, values, moral and ethical codes, privileges, status, or belief to a race or sex, or to an individual because of his or her race or sex*. Race or sex scapegoating is defined as *assigning fault, blame, or bias to a race or sex, or to members of a race or sex because of their race or sex*. Ms. Modestou then displayed the list of the prohibited "divisive concepts," such as *one race or sex is inherently superior; the U.S. is fundamentally racist or sexist; and that moral character is determined by race or sex*. She indicated that there were several provisions that she would not address today, for example, the addition of clauses to the terms and conditions for new and amended contracts and grants; notices that must be provided to unions, employees, and job applicants; and severe sanctions that could be imposed, including canceling current contracts or grants and debarring contractors and institutions from future contracts and grants. The order went into effect immediately. Ms. Modestou commented that, typically, there is a notice or comment period before such orders and regulations go into effect, but for this order, there was none, adding to the challenges in interpretation. Even the Office of Federal Contract Compliance Programs (OFCCP) (a division of the U.S. Department of Labor), tasked with some actions under this EO, initially struggled to provide guidance to the contracting community regarding what the EO means and how it will be enforced.

Because the EO was viewed as taking effect immediately, the university decided it was prudent to briefly and temporarily pause DEI training for two weeks to review the EO, Ms. Modestou indicated. The two-week pause also provided time for UI DEI training to be reviewed for any violations of the order. She stressed that this two-week interval was simply a *pause* to DEI training, not a *halt*. The pause did not impact teaching, lectures, book clubs, or other DEI activities. A statement about the EO has been posted on the DEI website. The OFCCP has been tasked with setting up a hotline for individual employees to call and report their employer if they felt that trainings were in violation of the EO. The hotline was established one day after the EO was issued. Many entities (institutions, law firms, consultants, the National Association of College and University Attorneys [NACUA]) have been looking at the EO and trying to determine its full meaning and breadth. The OFCCP has sought to provide some clarification regarding what types of unconscious or implicit bias training are and are not prohibited. The training is not prohibited if it is used to inform employees or foster discussion about pre-

conceptions or biases all people may hold regardless of race or sex. Ms. Modestou added that the EO does not prohibit the promotion of diversity or inclusiveness, as long as the terms of the EO are observed. Academic freedom concerns have been raised about a provision of the EO that states that there is no restriction on the discussion during an academic course of “divisive concepts,” as long as discussion is done *objectively and without endorsement*. It is unclear what exactly *objectively and without endorsement* means, however. Moreover, the OFCCP is an employment-focused agency that does not typically deal with matters of instruction, so it is unusual to find a reference to academic courses in orders that the OFCCP is responsible for implementing.

Turning to the status of the training review, Ms. Modestou indicated that the UI remains committed to its paradigm shift towards diversity, equity, and inclusion and to its DEI Action Plan. The two-week pause to review our trainings is expected to end on October 19. Supervisory training through Human Resources has already resumed. Harassment and discrimination prevention training is expected to resume tomorrow. A DEI Training Review Committee has been formed and is assessing submissions from departments of summaries of their current trainings for review. Few programs have had any pause, unless it was to acquire more information from the departments. This review committee is comprised of representatives from University Human Resources, the Provost’s Office, the Division of DEI, Purchasing, and the Carver College of Medicine Office of Diversity, Equity, and Inclusion. The university has provided guidance to departments seeking legal counsel. The UI has also been conferring with the Board of Regents, State of Iowa, along with peer institutions and external experts on OFCCP regulations.

Ms. Modestou concluded her presentation by explaining that, because the EO does not offer a definition of training, the UI has developed its own definition, *a mandatory or voluntary instruction or lesson for which the attendees must adhere to the policies or guidelines presented as part of their employment responsibilities*. This definition helps the UI separate *training* from educational endeavors undertaken for personal development or interest. The UI has also proposed the following disclaimer statement for its trainings, *the University provides this training in support of its core values. No part of the training is intended to cause anyone discomfort, guilt, anguish, or any other form of psychological distress on account of their race, sex, or any other protected classification*.

Professor Janssen asked who was serving on the review committee. Ms. Modestou listed the membership: Teresa Kulper (University Human Resources), Jan Waterhouse (University Human Resources), Maria Lukas (Office of the General Counsel), Ellen Chambers (UIHC Deputy Counsel), Denise Martinez (CCOM Office of Diversity, Equity, and Inclusion), Liz Tovar (Division of Diversity, Equity, and Inclusion), Bria Marcelo (Division of Diversity, Equity, and Inclusion), Tab Wiggins (Division of Diversity, Equity, and Inclusion), Renee Funk (Purchasing), and Ms. Modestou. Professor Janssen then commented that she and her colleagues have not heard anything about the EO from their federal funding organizations. Ms. Modestou explained that federal agencies have been asked to look over their terms and conditions for grants and contracts. As grants and contracts come up for renewal and for amendments, the new EO-related terms and conditions may be included and would then flow down to subcontracts and purchase orders. Implementation regulations have not yet been



received from the OFCCP. Legal challenges or a change in administrations could lead to the EO being rescinded entirely in the long term.

Professor Joseph asked about the procedure used by the review committee when a proposed program is submitted. Ms. Modestou responded that the committee reviews the presentation slides and other materials. The committee then determines whether the program is a training or an educational opportunity, if there is federal funding involved, and whether the program is mandatory or voluntary. The committee assesses whether the EO even applies to the program and, if so, the committee provides feedback. Ms. Modestou commented that, in general, although the pause may have caused some inconvenience, leading to postponed programs, the university felt it was necessary, because of the gravity of the sanctions, to take a close look at our programs. Professor Nisly noted that in her department, there was a two-day pause of DEI-related events. However, programming was quickly resumed after a review and the department is moving forward with scheduled events.

- *Updates to Title IX (Monique DiCarlo, Sexual Misconduct Response Coordinator and Title IX Coordinator)*

Ms. DiCarlo explained that on May 6, the U.S. Department of Education released new Title IX regulations addressing sexual harassment that went into effect on August 14. These regulations have the force and the effect of law, while previous “Dear Colleague” letters were simply guidance. The regulations include significant changes to current practice and are legalistic, prescriptive, and very due process-heavy. As a result of the new regulations, the university reviewed its policies and procedures over the summer and made changes on a quick timeline to incorporate key requirements. This led to the creation of one policy with two procedures. The new interim policy on sexual harassment and sexual misconduct (<https://opsmanual.uiowa.edu/community-policies/interim-policy-sexual-harassment-and-sexual-misconduct>) replaced the previous policy on sexual harassment and the previous policy on sexual misconduct, dating violence, domestic violence, and stalking involving students. Now, all university community members are covered under one policy.

Ms. DiCarlo emphasized that some aspects of university policy have not changed. The university remains committed to responding with care and compassion, while respecting the rights of all people involved in a resolution process to ensure that there is a fair and equitable outcome that prioritizes the safety of the university community. Despite the new regulations providing a narrower definition of Title IX sexual harassment, the UI policy continues to address a broader scope of sexual misconduct. Also, the university will continue to use the preponderance of evidence standard. As for changes to university policy, one the biggest changes is the requirement for a formal grievance process for certain types of allegations. The formal process includes an investigation and a live hearing with cross-examination of both parties by hearing advisors. During the hearing, the parties do not need to be in the same room, but they need to be able to see each other and hear each other. Also, in order for statements from a complainant, a respondent, or a witness to be used to determine whether there has been a policy violation, those individuals must attend the hearing and submit to advisor-led cross-examination. The required presumption of “not responsible” until the grievance process has concluded has changed what actions the university can take at the beginning of a process when an incident is reported or a complaint is made. For example, interim suspension of a student, or

a housing contract cancelation, or the removal of a student from a classroom will require that there is imminent physical danger. The regulations have, however, created a new opportunity for the university to consider adaptable resolutions; previous guidelines did not allow for this.

The interim period will last for about one year, Ms. DiCarlo indicated. During that time, the university will continue to monitor for regulation changes, seek campus feedback, and build our adaptable resolution resources, such as adding restorative practice and more robust mediation resources. Ms. DiCarlo invited those with questions to contact the Office of the Sexual Misconduct Response Coordinator. She noted that, for those who are mandatory reporters or what is considered on campus an academic or administrative officer, reporting responsibilities have not really changed. However, the options available to a complainant have changed, so a review of the policy is advised, especially section 14 of the policy, to ensure that you know how to explain the options if you receive a disclosure. Feedback on the interim policy can be given through a tab on the OSMRC website, <https://osmrc.uiowa.edu/>.

Professor Nisly asked about the anticipated impact of the new regulations on complainants feeling comfortable reporting their concerns. In particular, what might the impact be of having to be in a virtual room with the respondent during a hearing? Ms. DiCarlo explained that the first step after her Office receives a report is to invite the complainant to the Office, link the person with confidential resources, and begin informing the person, if interested, about resolution options. She added that not all circumstances would go to a hearing. For circumstances that occur off campus and do not fit the definition of Title IX sexual harassment, there is another process available. It is important to explain the resolution options to complainants and to inform them of the circumstances that would require a hearing if there was a formal complaint. Ms. DiCarlo acknowledged that during the regulation open-comment period, much concern was expressed around the country that the cross-examination would discourage people from coming forward to make a complaint. She pointed out that in UI student conduct cases, when a student could be expelled or suspended if a policy violation was found, hearings were already being conducted with parties in the same room. If one party refused to be in the room, videoconferencing options were used so that the adjudicator could see both parties. As a result of the pandemic, virtual hearings will likely be the norm going forward. The regulations require that the parties be able to see and hear each other. Regarding the cross-examination component, Ms. DiCarlo reiterated that it is the hearing advisor, not the parties involved, that is doing the questioning. If a party does not bring an advisor to the hearing, then the university is required to provide one. She expressed concern nevertheless that, under these new regulations, ground could be lost in terms of people coming forward to ask for help. She noted that it is important to convey in university messaging that someone could request help in the form of supportive measures, which are far more robust than previously, rather than by pursuing the formal process. There can be academic and workplace flexibility, but a complainant could also request that a non-disciplinary conversation be had with the respondent, to stop contact, for example.

Professor Nisly then asked who would make the final decision in these cases. Ms. DiCarlo responded that in cases of Title IX violations, the hearing adjudicator could be a person external to the university who possesses a law degree and some expertise with cases of sexual harassment, sexual misconduct, domestic violence, dating violence, and stalking. The hearing

adjudicator could also be an investigator from the UI Office of Equal Opportunity and Diversity, or an investigator from the UI Office of Student Accountability. There is also at least one attorney in the Employee and Labor Relations unit of University Human Resources who is trained to be an adjudicator. In cases outside of Title IX violations, the adjudicator would be an investigator in the Office of Student Accountability, for cases involving students. In cases involving an employer or visitor, the adjudicator would be an investigator from the Office of Equal Opportunity and Diversity.

- *Provost Office Proposals [Professionalism, Summer Salaries] (Lois Geist, Associate Provost for Faculty)*

Associate Provost Geist indicated that the professionalism proposal is still in the early stages of development. She noted that a wide-ranging policy on ethics violations already exists, but there is not a good process for identifying, and hopefully curtailing, some unprofessional behaviors that occur amongst faculty either in their peer interactions or in their interactions with students and staff. The proposal's intent is to infuse a professionalism arm into annual reviews, reappointment reviews, and post-tenure reviews. Violation of professionalism requirements would not be the sole reason for denying tenure or promotion, however. Associate Provost Geist commented that it would take effort to have difficult conversations with a faculty member because of unprofessional behavior, both in the moment and at the time of review. These conversations would lead to documentation of the behavior, so that if the behavior escalates to an unacceptable level, there would be a paper trail upon which administrators can act. Although only a small number of people would end up in violation of the proposed professionalism requirement, these people can have a detrimental impact on a wide range of colleagues around them. The impact can extend into the realm of diversity, equity, and inclusion, as well. Associate Provost Geist reiterated that this proposal is still in the early stages of development, but that she feels strongly that UI should have a faculty that is collegial and respectful.

Professor Janssen appreciated the consideration of how unprofessional behavior could intersect negatively with diversity, equity, and inclusion. She expressed concern, however, that a concept of professionalism could end up policing whiteness and being exclusionary. She emphasized that we should be very careful in defining what we mean by professionalism and in ensuring that we do not further marginalize non-white faculty members with this new evaluation component. Associate Provost Geist indicated that this concern was also articulated by the associate deans for faculty when she first mentioned the proposal to them. She added that she would continue to keep this concern at the forefront as development of the proposal moves ahead.

Professor Merryman asked if there has been consideration of a standardized review of faculty members in all aspects of their roles, in other words, a "360 degree" review. Associate Provost Geist responded that 360 degree reviews of every faculty member every year in a large college would be cost-prohibitive, although at the time of reappointment or promotion it might be possible. She indicated that another issue would be the question of the skill level of the person who does the debrief of the 360 degree review, because the feedback, some of which can be painful to hear, obtained from such reviews is very critical for professional growth and



development. It would be a challenge to deploy such reviews across all faculty. Professor Merryman commented that it would be difficult to determine a faculty member's level of professionalism without obtaining a full picture of their interactions in all of their roles. Associate Provost Geist responded that there may be other, less onerous ways of obtaining this information. President Yockey noted that, regarding a policy proposal for "evaluating up" (evaluations by faculty members of deans, associate deans, etc.), suggested by the Faculty Council last year, the Senate's Faculty Policies and Compensation Committee (FPCC) has begun discussions on this topic. The College of Education already has such a policy, so President Yockey is exploring that college's experiences with their policy.

Turning to the summer salary policy, Associate Provost Geist indicated that this issue had come to the Provost's Office from the College of Liberal Arts and Sciences. The Operations Manual currently indicates that if a faculty member on a nine-month contract teaches in the summer, their salary is automatically one-ninth of their regular salary. The Operations Manual does not provide a way to arbitrate that. The concern raised by the college is that the policy pushes departments toward the least expensive options to cover summer teaching, i.e., graduate students, post-docs, or adjuncts, even if a more senior faculty member would be the ideal instructor for a particular course. The FPCC has taken up a possible revision of the university summer salary policy to allow colleges to develop their own policies on this issue.

- *COVID-19 Update (Joe Yockey)*

President Yockey gave a brief update on various COVID-related issues. He noted that the latest COVID-19 self-reporting totals are posted on the university's coronavirus webpage, <https://coronavirus.uiowa.edu/>. The university is monitoring the reopening of local bars on October 4 and its possible impact on our COVID-19 infection numbers. Bars and restaurants are being vigorously policed by authorities for compliance with the relevant rules and protocols. The university is now in the process of developing a surveillance testing program. A committee has been formed to craft how the surveillance testing will proceed. This committee includes Jorge Salinas, the UIHC epidemiologist; Dan Diekema, the director of the UIHC Division of Infectious Diseases; Paul Natvig, the director of Student Health; Dan Fick, the Campus Medical Officer; and Edith Parker, the dean of the College of Public Health. In response to a question, President Yockey further explained that surveillance testing would involve testing a random selection of people across campus to try to identify asymptomatic and pre-symptomatic individuals so that, based on this data, planning for outbreaks can be carried out.

The Campus Incident Management Team (CIMT) is considering a revision to the face-covering guidance that is currently in place, President Yockey continued. The guidance now states that one can wear a mask or a face shield. However, concerns about whether shields provide adequate protection have been raised. Guidance may soon be issued in favor of masks over shields or masks in conjunction with shields. The university has also recently purchased a large supply of transparent face masks. These transparent face masks allow for a person's lips to be seen while speaking, which would be useful in foreign language classes, for example, and in other settings.

- *President's Report (Joe Yockey)*

President Yockey indicated that the Division of Student Life has created a Hawk the Vote program, which can provide materials or even class visits for interested faculty members.

IV. Executive Session – Presidential Search Discussion (All Councilors)

Professor Treat moved and Professor Brogden seconded that the Council move into executive session. The motion carried unanimously.

Councilors discussed suggestions and concerns for the upcoming presidential search.

Professor Sheerin moved and Professor Merryman seconded that the Council move out of executive session. The motion carried unanimously.

V. From the Floor – There were no items from the floor.

VI. Announcements

- The next Faculty Senate meeting will be Tuesday, October 27, 3:30 – 5:15 pm, via Zoom.
- The next Faculty Council meeting will be Tuesday, November 17, 3:30-5:15 pm, via Zoom.

VII. Adjournment – Professor Merryman moved and Professor Russell seconded that the meeting be adjourned. The motion carried unanimously. President Yockey adjourned the meeting at 5:15 pm.