



IOWA STATE UNIVERSITY
Faculty Senate

IOWA STATE UNIVERSITY FACULTY SENATE
FACULTY SENATE MEETING MINUTES
SEPTEMBER 14, 2021 – 3:30–5:00 P.M.
GREAT HALL, MEMORIAL UNION

Present: Anderson, M.; Andreasen, C.; Behnken, B.; Bennett-George, S.; Beresnev, I.; Berger, D.; Burrough, E.; Butler, A.; Chen, H.; Cook, K.; Daniels, T.; Davis, R.; Day, T.; Faber, C.; Frank, M.; Freeman, S.; Gillette, M.; Hanson, V.; Hornbuckle, B.; Janvrin, D.; Kang, S.; Kedrowski, K.; Kovnir, K.; Kreider, B.; Kushkowski, J.; McGrail, M.; Micich, A.; Morgan, E.; Muecke, M.; Oberhauser, A.; Padgett-Walsh, C.; Parsa, R.; Perkins, J.; Peterson, D.; Quam, A.; Rayburn, C.; Reddy-Best, K.; Robertson, A.; Rosa, J.; Rosentrater, K.; Schieltz, J.; Smalley, S.; Smiley, A.; Stevens, J.; Tootle, D.; Townsend, T.; Wade, N.; Wallace, R.; Wang, Q.; Watanabe, O.; Wheeler, A.; Wilgenbusch, E.; Wood, A.; Wu, H.; Zerbib, S.

Absent: Al Shihabi, D.; Armstrong, P.; Bolser, K.; Bratlie, K.; Beitz, D.; Cardoso, C.; Chang, C.; Cochran, E.; Dewell, G.; Gomes, C.; Johnson, D.; Lutz, R.; Martin, M.; Nair, A.; Napolitano, R.; Pistolesi, S.; Roe, K.; Schrier, T.; Shaw, A.; Svec, C.; Vary, J.; Williams, C.; Winer, E.

Substitutes: Davis, S. for Dubisar, A.; O'Neal, M. for Gassmann, A.; Bailey, M. for Hernandez, B.; Stalder, K. for Lonergan, E.; Hall, A. for Schaal, M.

Guests: Wickert, J. (SVPP); Bratsch-Prince, D. (Assoc. Prov.); VanDerZanden, A.M. (Assoc. Provost); Knief, A. (Parliamentarian); Johnson, C. (GPSS); Campbell, J. (SG); Decker, M. (SG); Kealey, K. (ISU Daily); Obbink, K. (CFSPH); Norton, M. (UC); Peters, F. (SA); Allaire, N. (English); Sponseller, B. (VMPM)

1. Call to Order

Seating of Substitute Senators

President Wheeler called the meeting to order at 3:31 p.m.

President Wheeler encouraged senators to wear masks and take advantage of the Great Hall to socially distance. She said that she would speak at the microphone without mask, so that she could be heard; she asked that senators not follow her example.

President Wheeler said that the meeting would be conducted in accordance with Robert's Rules of Order, in order to make a safe space for all voices to be heard in a respectful environment, and so

that decisions would be made by majority voice. She said that Faculty Senate's Procedures Manual provides descriptions of Faculty Senate (FS) positions with special titles.

President Wheeler noted that senators last met in the Great Hall 18 months ago, at which time Provost Wickert announced that after Spring Break, instruction would move online for two weeks.

President Wheeler then seated substitute senators.

2. Consent Agenda

FS Agenda September 14, 2021 – [21/A/1]

FS Minutes May 4, 2021 – [20/M/10]

FS Docket Calendar – [21/C/1]

FS Bylaw Changes [21-1]

With no objections, the consent agenda was adopted by general consent.

3. Special Order: Fall Planning – Panel Discussion: Mike Norton, Anne Marie Van Der Zanden, Frank Peters, Jonathan Wickert, Kristen Obbink

Provost Wickert thanked senators for putting this important topic at the front of the agenda for discussion and briefing. He said that he has heard a great deal from faculty, staff, students and their parents, external stakeholders, Board of Regents (BOR) members, legislators and other elected officials about fall operations at the university. These groups have represented all sides of a very complex issue. He has received a lot of feedback from faculty expressing heartfelt concerns: feeling as though the university has betrayed them, putting faculty at risk or in harm's way, among many other heartfelt expressions of concern. He has heard and received these and very thoughtfully considered them. Not an hour in the past month has gone by when Provost Wickert or ISU President Wintersteen or other leaders across campus haven't been thinking or working on these issues. The concerns on our campus are not unlike those at UI and UNI. Provost Wickert said that he has received multiple petitions and multiple letters making recommendations of what the university should be doing. He has received letters questioning the moral character or courage of university leaders. Provost Wickert says that he fully understands that. Every single petition or letter received from senators, distinguished professors, and faculty groups in various departments have been forwarded to BOR Office, so that they are aware of the situation as well. Scientific data provided by faculty in the Life Sciences have been shared with BOR Office. That was very helpful. Provost Wickert says that he continues to communicate with BOR about operations on campus.

Provost Wickert said that ISU is following the "rules of the road" as set out for us. You may not like them, but we are bound to follow them. State law prevents us from requiring vaccines at the university. ISU is part of the state. We are obligated to follow state law. BOR does have authority to require masks, which is different from the situation for K-12 schools. BOR decided not to require masks at the three universities. We cannot go against the guidance or decision of our governing board. Ultimately, some policies are set by elected officials or our governing board expressing the will of the citizens of Iowa. This is quite different from private universities, which have autonomy in how they operate. This is also different from universities in other states.

Provost Wickert expressed disappointment at the level of mask usage in classes. He had expected, given encouragement of mask use and education about their benefit, that there would be higher utilization of masks at this point in the semester. He said that he has looked in the windows of classrooms and talked to faculty, and usage varies from class to class. A small number of faculty

have told Provost Wickert that they appreciate that we don't have a mask mandate for classrooms. Some faculty have told Provost Wickert that his wearing an "I'm vaccinated" button is a "stigma." Provost Wickert defended wearing the button, saying that he is modeling behavior, just as he wears a mask to model behavior. He acknowledged a spectrum of views, and BOR gets very mixed feedback.

Provost Wickert said that he has emphasized what he calls "the art of the possible." There are some things that we can do, and some steps we can take to "move the ball forward." Over the summer, department chairs made a number of such recommendations. He encouraged senators to think about items that we can do, within our sphere of influence. From the recommendation of department chairs, ISU was able to get approval from BOR to change mask signage. It's a small step, but definitely a step forward. Another example is the policy for employees with immunocompromised family members. For people in that category, the policy is extremely meaningful. There is also a new process for instructors who test positive, but are asymptomatic and feel well enough to move their classes online. Provost Wickert also highlighted expertise from Senator Gillette and colleagues on ways to best communicate the value of wearing face masks and getting vaccinated to a young adult population. The Provost's Office will take that guidance and incorporate it in future messaging.

University Counselor Norton noted that other states and other institutions have taken legal action against the state or governing body with regard to a ban on mask mandates or vaccine mandates. There has been some success, for example at UNC. This is not a viable legal option under our state system. BOR is our governing authority. We do not have the ability to sue BOR, because under state law we are the same legal entity. Under state law, any inter-agency dispute has to be resolved through mediation. We would need BOR's permission to do that. Then the attorney general would have to agree to take that dispute and lead mediation. That is not viable under our system.

Counselor Norton pointed out that ISU President Wintersteen serves at the will of BOR; and BOR President Richards serves at the will of the governor. All of these factor into why it is not a viable option for us to take legal issue with either mandate ban.

Counselor Norton noted some area for encouragement. There was a recent study, with help from faculty, on vaccine status of students. 72% of in-state students were fully vaccinated. This rate is similar to other institutions that have mandated vaccines and allow exceptions under their state laws. So institutions with vaccine mandates are not achieving a greater level of vaccinations, even with their mandates. No survey was conducted for out-of-state students, but there is no evidence to suggest that their rate of vaccination would be different. We don't have information about faculty and staff vaccinations. However, federal facilities require workers to be vaccinated. This includes Ames Lab, where over 90% of employees attested to full vaccination status. This isn't a complete picture, but a fairly comprehensive picture – and positive picture – of vaccine status on our campus.

Associate Provost VanDerZanden said that the Academic Continuity Workgroup (which she chairs) has met weekly over the past 18 months (but canceling some meetings over the summer). This workgroup was created, along with several other workgroups, in the initial phases of the campus response to COVID. The workgroup has 20 active members, representing every facet of academic continuity, including: FS president-elect, Student Government (SG) president; Graduate and Professional Student Senate (GPSS) president; chair of Chairs Cabinet; a representative from the Dean of Students Office; Katie Baumgarn (Room Scheduling); members from the Center for

Excellence in Learning and Teaching (CELT); and associate deans for academic programs. Department chairs report concerns from faculty in their departments to those associate deans, and Associate Provost VanDerZanden thought that this was an effective conduit for bringing issues forward and addressing them.

Associate Provost VanDerZanden said that Room Scheduling has been able to fill 50-60 requests from faculty for larger classrooms to promote social distancing and address other pedagogical considerations. Associate Provost VanDerZanden said that successful requests tended to be classes with 40-140 students. She cautioned that relocating has sometimes required classes to move to different buildings. But there is that option for faculty.

Associate Provost VanDerZanden added that the Academic Continuity Workgroup does reach out to faculty colleagues for input, as well as the University Response Team, and health team representatives (including Kristen Obbink and Erin Baldwin), when expert knowledge is required.

Associate Provost VanDerZanden highlighted the success of faculty, FS, and EB pushes to revisit attendance policies with the return to in-person class meetings. Students who were on the workgroup felt that it was important for students to have accountability, and to encourage their classmates to be respectful of attendance policies.

Professor Peters chairs the University Response Team, which includes associate deans among others and meets three times a week; a senior leadership group meets three times per week; the University Operations Center meets three times per week.

Professor Peters pointed out that cleaning has changed this year. The number of cleaning staff on campus has been reduced as a cost-saving measure. The move was supposed to take effect last year, but was put on hold. We now know that intense cleaning of surfaces is not as important with respect to mitigating the transmission of COVID. Faculty offices are not being cleaned by cleaning staff. Cleaning supplies are made available to faculty, and faculty are encouraged to use them. This is not a COVID issue, but a cleaning issue.

Last year, notifications were sent to faculty about students known to have tested positive. This year, ISU is not doing contact tracing, on direction from Iowa Department of Public Health (IDPH) that it is not necessary. Notification of instructors was a matter of academic integrity, not a public health notification; that is, the purpose of the notification was to alert the instructor that the student would not be in class. The instructor was not told whether the student was in isolation or quarantine. Without contact tracing, we don't have that information. The Academic Continuity Workgroup has advised that positive cases are excused absences. Students can obtain e-mail from a public health agency to provide to faculty as documentation. The only positive cases that ISU knows about are those coming from Thielen. Currently, there have been less than 40 such cases. If ISU provided notifications about these positive cases, there would be questions about the others.

Professor Peters added that Professor Obbink will say that we are moving from a pandemic situation to an endemic situation. With that knowledge, we should ask what our goal is for notification. 75% of our students are vaccinated. Per the flowchart, these students do not quarantine. So notifications would be a lot of work for not a lot of good. We don't want to cause specific alarm for that day, but want to encourage people to get tested. This would be a positive use of notification to raise awareness.

Professor Obbink said that she served as COVID-19 public health coordinator and serves as a health team leader with Erin Baldwin. She thanked faculty for their valued partnership, conversations, continued feedback as the COVID response goes on. She said that the pandemic is transitioning to an endemic state, but we're not there yet. As we have seen, COVID numbers across the country continue to be high, and the rate of transmission is high. We are at a point where we cannot get the number of COVID cases to zero. As a public health responder, contact tracing, case investigation, and other responses shift. In this transition state, immunity will continue to rise, even with the variants circulating. The vaccine is a very important piece of that. Natural infection also contributes. The endemic state will be more like the seasonal flu. There will be a certain level of immunity, and transmission will be more stable. But she wanted to stress that we are not there yet. Each and every day, community transmission is high, as people come into contact with COVID-positive people. We have a personal responsibility to protect ourselves and protect others as well. The Cyclones Care Campaign needs to continue.

IDPH discontinued contact tracing. All positive cases in the state are still contacted through county public health. IDPH can only share data with public health agencies. Story County is a public health agency, but ISU is not. ISU makes data available on the Moving Forward webpage, which is updated on Wednesdays. The IDPH and CDC numbers may differ, because they have different reporting periods. The State of Iowa's 7-day average for the state was 9.0%, and for Story County was 6.4%. At ISU, since the beginning of classes, there have been 33 positive cases. Testing at ISU is conducted on symptomatic students and done at Thielen. We do report our self-reports, and encourage students in the Department of Residence and sororities and fraternities to report to us. Last year, congregate housing was a high contact area. Self-report numbers are reported out separately, because we don't have a known denominator for them. That information was added to the webpage last week to clarify and add greater transparency. From September 6 to 12 (Monday through Sunday), there were 12 positive cases among 180 tests (6.67%) and an additional 3 self-reports.

ISU continues to monitor vaccine data in Iowa and Story County. IDPH has numbers on their website. People aged 18 and older who have received the full vaccine series in Iowa is 64.1%, and in Story County is 60.8% according to IDPH. ISU continues to monitor the vaccination numbers in the clinic on campus. Professor Obbink said that Erin Baldwin reported that about 50 new students initiated a vaccine series.

ISU remains in regular communication with partners, including the mayor, city council, and police department, not just in Ames, but in surrounding communities. The Emergency Response Team is in close contact with Story County Public Health and IDPH. ISU is also in close contact with hospitals and clinics, receiving confidential information about capacity. They are seeing a lot of respiratory illnesses that are not COVID. Professor Obbink thanked the Statistics team for their help with vaccination numbers, and Senator Gillette for her team's input on how to message to students for outreach and modeling good behaviors.

President Wheeler said that she had received a number of questions by email from senators. She read the first one: "Given the recent FDA approval of the Pfizer vaccine and the judge's ruling yesterday, which now gives Iowa K-12 schools the authority to impose mask mandates in classrooms, will the university more aggressively pursue mandatory vaccinations and required masking inside all university buildings, including classrooms?"

Counselor Norton said that the FDA's full approval of the vaccine is helpful as a motivating factor for hesitant people to get the vaccine. But the state law forbidding vaccine mandates is currently in place. Some states based their law on the fact that the vaccine was not fully authorized; our state law does not make that differentiation. So the fact that the vaccine no longer has just emergency use authorization does not affect the state law with respect to a vaccine mandate.

Counselor Norton noted that Provost Wickert had said that our direction on masking is coming from BOR. So the judge's ruling does not have legal effect on our ability to require masks. However, it may have effects in other ways, which we'll have to wait to see. The governor signaled where she stands on the effect of the lawsuit. There have been other school districts that have responded to that. The political winds may change on the issue because of the case. But it doesn't change our situation, because BOR set the rule, not state law.

President Wheeler read another question: "The university administration argues that it has its hands tied in terms of state law and Board of Regents directives. But why has the university gone beyond the state-mandated directives, essentially eliminating or diluting all health and safety protocols that were in place last year? Rapid testing is almost impossible. The university is no longer doing adequate tracking of cases, contact tracing, or even notification of students or faculty who have been exposed to infected individuals. Alternative Work Arrangements (AWA) are only allowed for extreme cases of immunocompromised individuals. Faculty are under constant surveillance with threat of serious sanctions for any temporary switching of modality or sick days. Teachers with young children who are not eligible for vaccinations are given very little to no leeway to safely protect themselves, their children, and their students in the case of outbreak or symptomatic or asymptomatic infection. University signage on campus is terrible and inconsistent--in effect encouraging people not to wear masks. It's one thing to obey non-science-based laws that jeopardize community health because your hands are tied; it's another to be complicit in making it even more difficult for faculty, staff, and students to operate in a safe working and learning environment. What we need now, my constituents are telling me in overwhelming numbers, is administrative courage. Our leaders have a moral and professional obligation to ensure a safe environment. They are failing miserably, my colleagues believe, in meeting these obligations."

Provost Wickert said that he appreciated this important set of comments, and it's important to put them all out on the table to get it out there. These thoughtfully worded set of comments are consistent with other communication the Provost's Office and President Wintersteen have received. The Alternate Work Arrangements (AWA) program was established as a policy by BOR, which has since expired. As an overarching comment, Provost Wickert said that he understands the frustration and where it's coming from. He doesn't think of the situation as our hands being tied, so much as a fiduciary obligation we have to follow the rules as established by our governing board. Other states may operate in different civic and political environments, but we have to operate within ours. He said that he welcomes specific ideas of things that we can do on our campus. He is keenly aware of the challenge of childcare in our community. The list of challenges is very long. But he believes that we will work our way through this phase. With the rise of the delta variant, we are back in the fog, but we can work together, one step at a time, to make advances.

President Wheeler read another question: "In lieu of adequate protection from ISU administrators or the Board of Regents, what is the Faculty Senate prepared to do to effect necessary changes that will protect faculty, staff, and students from the significant and ongoing risks? Are we willing to go

on strike, to stage walkouts, to file a class-action lawsuit (as our Faculty Union colleagues at UNI have done)?"

The panelists thought that the questions were not for them, but for senators to discuss.

Senator Peterson asked about a change in policy with regard to contact tracing and communication. The panelists had said that those policies were about academic integrity. But as late as January 2020, posted to the Thielen website was a pre-COVID policy about contagious diseases and class absences. He read the statement:

"If you are diagnosed with a contagious illness that requires you to remain out of work or school per specific public health protocol. Examples of illnesses that fall into this category include measles, mumps, or pertussis (whooping cough). In such instances, TSHC staff will work with community public health officials to ensure all health guidelines are followed, and will work with the Dean of Students Office to assist in communication with your instructors. We will also assist in ensuring that friends, family or other close contacts are notified if any preventive care is recommended for them. Return-to-class guidelines will be provided, and this will rarely involve a follow-up visit to the health center."

Senator Peterson said that as of August 10, this policy was still posted to Thielen's website. Senator Peterson said that he did not understand why would we rescind our pre-pandemic policy, so that we actively do less than we would have done prior to the pandemic.

Professor Obbink said that her background is as an epidemiologist with IDPH working on other communicable diseases and providing guidance to the general public. She has not discussed the Thielen website with Erin Baldwin. But that policy would make sense for other communicable diseases for which it is possible to get to zero (e.g., mumps or measles). Contact tracing helps us reach that goal. Through contact tracing, people who are potentially exposed are identified and isolated. The CDC, Story County Public Health, and IDPH have shifted the strategy with respect to COVID, because we know we will not get to zero. That doesn't mean that we don't want to prevent spread, but we cannot reach zero by identifying, containing, and eliminating. In our circumstances, we have to assume that you will potentially come into contact with a COVID-positive person.

Professor Obbink added that because ISU is not a public health agency, we do not receive data from the state. With our limited knowledge, it is difficult to correctly identify who is exposed and who has had close contacts. We do not want to send out messages and have people quarantine when we cannot be certain who was exposed. We don't want to raise a false alarm.

Professor Obbink said that ISU can say that we are monitoring data closely and are mapping with the data we have. ISU is focusing on congregate housing, which is a heavy risk factor. Notifications are sent when people in the Department of Residence, sororities, or fraternities test positive. And when people test positive at Thielen, their roommates are notified. But we have to be careful not to name the person, in order to protect confidentiality.

Provost Wickert thanked Senator Peterson for the question and said that he would notify Thielen. Senator Peterson replied that the website has been updated. Provost Wickert offered the observation that in January 2020, this contagious disease was more of a new thing, but "we're living it now." When contact tracing was new, people cooperated, and it was very successful for a while. As the pandemic wore on, people stopped cooperating and even became abusive. We are at a point now where no one wants to participate in contact tracing.

Senator Reddy-Best asked Counselor Norton about the process to bring disputes forward. Has there been a dispute brought from the university when we disagree with BOR? How often? And what happens?

Counselor Norton said that ISU administrators discuss with BOR the ideas and things faculty have told them and seek approval and coordination on all aspects of the university. He is unaware of anything arising as a formal dispute where there is a formal procedure. The reality is that BOR has the ability to remove ISU's president at their will. So ultimately a dispute of that nature would be decided by removing the president. That's BOR's ultimate control of the university. But it's true of them too. If BOR offended the governor and she felt strongly on the matter, the governor has the same control mechanism over BOR. Nothing like that has been suggested in this setting. Our strategy in working with BOR is collaboration. Typically, you don't resolve disputes by fighting; instead, you come together in collaboration, taking into consideration the spectrum of interests, realities of the political and legal landscape we live in, and trying to come up with the best course in that reality. We may not agree with everything BOR does, but they are acting in good faith around their positions.

Counselor Norton added that we have to recognize that there is no unanimity about these issues in our state, country, or world. We are in a system where we have to find balance among all those competing ideas. That's how a political system works. As a university and a university in BOR system, we're in a political system.

4. Special Order: HF 802 – Jonathan Wickert, SVPP and Mike Norton, University Counsel

Provost Wickert said that he had announced to FS in the spring that the legislature was considering a bill modeled on U.S. President Trump's ban on divisive concepts. The bill passed and was signed into law by Governor Reynolds over the summer. We are now operating under this law. Provost Wickert said that this is the sixth time he has delivered this presentation, which he offers to keep the campus community, faculty, and staff informed. Associate Provost Bratsch-Prince has led a number of workshops for faculty. EB has been briefed on the law. Later this month, Counselor Norton and others will give a presentation on the public classroom.

Provost Wickert said that HF 802 pertains to a narrow range of topics. The vast majority of things on campus – trainings, courses, academic programs – can and should continue just as they have in the past. ISU is as committed today as yesterday and tomorrow to the key principles of diversity, equity, and inclusion and having a welcoming and vibrant campus. All views are welcome. HF 802 will not change that. It is important for faculty to be aware of this law, because it is the law, and we are bound to follow it. Some factors in the law can affect what we do here on campus. We can reduce our risk of violating the law and reduce the risk of being accused of violating the law by adopting principles and taking some action.

Provost Wickert continued: It is challenging, because the law is brand new. Laws are tested in court, and as they are tested, we learn more about what they mean. There are things in this new law that are not well-defined. And there is a fairly broad grey area, because there is no bright line separating what is okay from what is not. The Provost's Office has issued two versions of FAQ. Provost Wickert thought that the updated version is clearer.

Provost Wickert pointed out that the law affects K-12 differently than higher education. We know that we are being watched, and so we want to take a cautious approach, to protect faculty and our academic mission. This past year has been a tough one. Faculty have been trolled and doxed. There have been media requests for syllabi for programs. The public and the legislature have questioned the value of tenure. Lectures have been videotaped and there have been attacks on the arts and humanities. We are taking action to reduce risk, to educate the campus in a structured framework of what is and isn't law, and defend our programs when they come under fire from the public or the social media rage machine.

Provost Wickert said that today's presentation will outline how we are currently interpreting HF 802. He is not ruling out that the interpretation may change in the future. As ISU is tested and the other universities are tested, we will learn more, and our position on HF 802 may change. The legislature may take up the matter when they meet for redistricting, or they may take it up in January.

Counselor Norton said that University Counsel provides campus with knowledge to make good decisions within the operating legal framework. This is the point of FAQ and this presentation: to provide information so that faculty can make good decisions about where they stand in relation to the legal principle. There have already been two challenges to trainings on campus under this law. This is an active area. The method of challenge is not to raise a lawsuit or a challenge to BOR, ISU President's Office, or Provost's Office. Instead, a picture of a slide from training is sent to a newspaper with a particular political bent and a firestorm develops. ISU is trying to reduce the risk of that happening to you.

Counselor Norton said that ISU has a strong belief and defense of academic freedom. The law is patterned after U.S. President Trump's executive order on divisive concepts. The state legislature applied it to all government entities, but treats K-12 schools different than BOR institutions. In addition to ten "specific defined concepts," the law expands protection of students from disparate treatment based on political ideology. Counselor Norton pointed out that the ten concepts are fairly conclusory in their nature: the end or conclusion is what is being called out by the law (e.g., "one race or sex is superior to another"). There is a lot of information that can be discussed that doesn't ever get to that specifically defined conclusion which is not allowed to be discussed. Some of the concepts are broader and cover more area and contain more risk with respect to how we navigate on these issues. Some of the issues are less conclusory in nature. When U.S. President Trump's executive order went into effect, ISU conducted a review of all mandatory training on campus. We found that none of them violate the specifically defined concepts. There were a couple where the presenter was advised to make minor modifications to present the material in a different way. But even for ISU's mandatory training having to do with racism, ISU would not have to modify its content to comply with this law.

There are a handful of undefined phrases that occur in the law: employee and student training; "larger course of academic instruction"; "required" or "mandatory"; and germaneness.

"Required" or "Mandatory" Trainings: The law applies only to mandatory staff or student trainings. Voluntary programs and activities are not affected. Training would be prohibited if students or employees were required to participate and the training contained specific defined concepts. It would be unacceptable to have discussion of the specific defined concepts during such

training. But, observed Counselor Norton, very few trainings on campus are mandatory; many are voluntary.

“Required” or “Mandatory” Courses: Counselor Norton observed that some courses are more mandatory than others. There are some courses that are required for a major, and others that are electives. There are some courses that are required of all students, regardless of major. Those courses are at greater risk of being deemed “mandatory.” When students have choice about what classes to take, there is less risk. A course could be defined as a prohibited training if it resembles and functions like mandatory training: if it is required of all students (e.g., general education degree requirements or requirements to complete a degree program); or a particular activity is required (e.g., a requirement to attend a guest speaker’s presentation).

Germaneness: Germaneness is an established concept in connection with academic freedom (FH 7.1.1 and FH 7.2.1.1). Something is germane when it is relevant to the scholarly subject matter of the course and presented by appropriate means in accordance with accepted professional standards. Specific defined concepts might be germane in one course (e.g., sociology), but not another (e.g., civil engineering). When the topic is germane, there is less risk of violating the law. In such cases, it is easier to argue that the discussion occurs in the larger course of academic instruction. Counselor Norton acknowledged that faculty as subject matter experts are in a better position than anyone to judge what is germane. When the material is germane, discussion of it is squarely within academic freedom, and there is very little risk with respect to HF 802. As the topic becomes less germane, the risk increases. If training is put into a course as a way to get around the requirement that we not have mandatory training on these topics, the risk is significantly higher.

Reducing Risk: Counselor Norton outlined some risk reduction strategies. Give students choice. Make sure that the material is germane, that it is relevant to the scholarly discipline and presented by appropriate means. Provide opportunity for open discussion, that is for students to freely express alternative viewpoints in accordance with BOR syllabus statement on free expression. Be clear in the syllabus when a course includes specific defined concepts, so that students can exercise choice about whether to enroll in other courses or sections. Providing students with knowledge that these concepts will be discussed and allowing them to choose not to take the class effectively reduces risk.

Counselor Norton noted that most faculty do not conduct training. The law’s concern is with “mandatory training.” So when training is offered, describe it specifically and intentionally when it is required, and make clear when it is not. “Encouraging” or “suggesting” training to someone may be interpreted as a requirement. Instead, say that the training is “open to all” or “available to everyone.”

Counselor Norton added that VPDI’s Office has provided resources for individuals with questions about trainings that are being offered. Counselor Norton said that he and VPDI have spoken to faculty who have questions and concerns about their courses. Counselor Norton said that he is not aware of any faculty member being asked to change or alter coursework because of HF 802. True, some questions have been raised, but none of them revealed an issue. This underscores Provost Wickert’s comment that the risk applies to a very narrow set of courses.

Senator Kedrowski said that she teaches a lot as part of her job and conducts a lot of training. These are very different activities. Student learning goals differ from training goals. The way material is

presented is different. The purpose is different. So why, when the legislature clearly created a carve-out for academic instruction, does ISU's interpretation equate any of our academic work with training? She added that none of the other Regents universities have interpreted the law in this way.

Counselor Norton agreed that the law concerns training. But that word is undefined. ISU's University Counsel is making a legal assessment that there is a risk if "training" includes academic instruction, and the risk increases the more a class moves away from germane content. There would especially be a problem if an instructor incorporated training material involving specially defined concepts in academic instruction. There would be a high risk that a student would be concerned and complain, even though the material arose in a class and not in training. Because of the material, the way it's presented, and its relationship to the overall course, there would be significant risk and some people would deem it a violation of the law. Counselor Norton said that his responsibility as legal representative for the university is to point out that risk and help faculty to understand how acting might put them and the university in jeopardy. Counselor Norton agreed that other Regents universities have taken a different approach on this issue, and does not question their doing so. But he is offering ISU faculty the best legal advice he can as legal representative to the university. His ethical responsibility is to point out the risk so that faculty can make informed decisions.

Senator Behnken said that he disagreed with Counselor Norton's interpretation of HF 802 for reasons that Senator Kedrowski had offered. In HF 802, "training" is defined clearly, "mandated" is defined clearly, and both are used over and over. "Academic course of instruction" clearly differs from "training." Senator Behnken could not see how that was up for interpretation. In the section concerning higher education, there is no mention of "training" or "mandatory." University Counsel's linkage of those things is problematic. People at other institutions, legislators who have contacted him, and attorneys he has talked to do not understand why ISU Counsel has interpreted HF 802 in this way.

A second point that Senator Behnken made concerned "risk." He has heard risk invoked in administrative discussion of HF 802. People who teach classes in U.S. Diversity have always been exposed to this risk. They accept it as part of the job. Trolling and doxing are unpleasant, but the risk goes with the job. But when University Counsel and the Provost's Office emphasize risk it sends the wrong message. It communicates that this decision is made in fear. President Wheeler (in an interview with *Inside Iowa State*) said that faculty are experiencing anger and fear. Senator Behnken said that some colleagues are angry and prepared to defy HF 802 in order to make a point about academic freedom. Other faculty are fearful. But faculty relationships to their students are based in trust. That trust is eroded by fear. So when ISU administrators emphasize the element of risk, they stoke this fear, and it does not make for good instruction or good education. Senator Behnken said that he does not understand why administrators are going down this path, and he is troubled about its impact on the revision to the U.S. Diversity requirement.

Counselor Norton acknowledged Senator Behnken's valid statements and appreciated his input. He added that University Counsel and faculty have different roles at the university, and it is important to appreciate that.

Senator Reddy-Best said that she also teaches these courses. She ensures that the topics are germane to the class and that students have freedom of expression, and she is careful in how she presents the material. Despite all of these precautions, she does think about trolling and doxing. Someone could easily take a picture. Trolling and doxing can be emotionally damaging. The university reviewed all

mandatory training. Is there some way that someone could review her class materials and presentation? Even if she doesn't agree that she is doing something that might be a risk, would someone point that out to her?

Counselor Norton said that that could be done in a number of ways. He has received several calls from faculty and discussed their plans with them. Most people who have concerns are individuals who teach courses where the specifically defined concepts are germane. In that case, instructors should feel free to teach the material as their professional expertise indicates is appropriate. The Provost's Office and CELT provide opportunities too. But bring forward your questions, thoughts, concerns, and fears. Counselor Norton said that there are people who will help faculty evaluate their circumstances. He repeated that when the material is germane, there is very little risk.

Provost Wickert add that he has had conversations with individual faculty members and department chairs. When the material is obviously germane, the Provost's Office can stand up for faculty. He added that faculty should not be teaching non-germane material anyway.

Provost Wickert said that FAQ and the university's position provide some kind of framework, as imperfect as it may be and as much as individual faculty members may disagree with it. For "non-mandatory" classes, students have the ability for open discussion and free expression. With this layered framework, the Provost's Office and University Counsel are in a better position so that when there is a challenge, the framework exists as a defense. Provost Wickert said that he has seen faculty receive death threats. He has seen faculty members move out of state. He does not wish that on anybody. This approach is trying to minimize that.

Provost Wickert said that on the first day of class this semester, a faculty member told the class that the class would include these topics that are germane to the class. A parent made a complaint the same day. The situation was handled and did not escalate, but these things can escalate in a matter of hours. If a photo is sent to the wrong website or circulated in the wrong arena, it can become intense very fast. Provost Wickert said that ISU is working to protect faculty on campus in this environment.

Senator Peterson said that the approach and emphasis on risk is problematic. People who teach or research these topics know the risks. But because of the clunkiness of the FAQ, our colleagues now perceive a new risk: a risk from the university. If a faculty member is judged to have violated the law on the university's interpretation of the law, FH says that the faculty member can be fired, notwithstanding tenure. A lot of faculty are deeply afraid – not of students, maybe of websites, but also of administrators. That's bad for morale.

Senator Peterson said that he appreciates that University Counsel's role is to provide advice. But the faculty job is to deal with that advice. Faculty make decisions about the curriculum and what approaches to adopt. Other Regents universities have other risk profiles. The question that faculty and administrators have to make is the tradeoff. But what needs to be realized is that by adopting this interpretation of risk, we are making a tradeoff with respect to academic freedom. A lot of people inside and outside the university have observed not only that we have a different risk profile from UNI and Iowa (who have said that HF 802 does not affect classes), but that we have a different attitude towards academic freedom than those other universities. That's the message that we've sent. Hopefully, it's not intended.

Provost Wickert said that this was the first he had heard this, and wondered why Senator Peterson had not called his attention to it. Senator Peterson replied that he had sent an e-mail. Provost Wickert repeated that this was the first he had heard. Provost Wickert said that ISU's position is no different from Iowa's. He added that we will see where time takes us, because all three universities will be tested. Our strategy focuses on the "long game."

Senator Rosa called attention to the environment, where someone can make a claim and it will be tested in the court of public opinion. Whether the material is germane and whether the material is mandatory will then be subject to interpretation. This problem is likely to arise for those courses where the material is not obviously germane (e.g., political science) and not obviously not germane (e.g., hard sciences). What will the university do for faculty when this happens? Will faculty be defended? The biggest fear that faculty have is that there is no process for the defense of faculty. If we don't have it now, it will be too late to create a process, and faculty will be hurt.

Provost Wickert returned to the Power Point slides to present material on trolling and doxing. The university provides advice for things to do and things not to do when faculty are doxed. The situation can blow up in a matter of hours. Provost Wickert said that he has seen twelve cases over the past five years. If necessary, the university will remove the faculty member's phone number from ISU websites and work with ISU Public Safety. Students already record classes, and they can get national attention and local attention of legislators and others by sending those recordings to particular outlets. The first step for a faculty member to take is to notify the chair, dean, and Provost's Office. The individual faculty member should never respond to trolls or doxers.

Provost Wickert added that faculty members cannot violate the First Amendment. So ISU's defense depends on the specific circumstances and where the truth is. We need to figure out what has been reported and what the full story is. If the faculty member acted appropriately, ISU will marshal resources in the faculty member's defense. Provost Wickert added that his office has had a strong record of defending faculty. He is very proud of that record.

Counselor Norton said that the first FAQ was imperfect. He added that it has been a disservice to characterize HF 802 as an academic freedom issue. It's not. When class material is not germane, it is not an academic freedom issue. If a faculty member steps outside of germane content, they are putting themselves at risk for criticism by students. This is nothing new about academic freedom and germaneness. So to characterize HF 802 as somehow threatening academic freedom is a mischaracterization.

Secretary Butler pointed out that Provost Wickert had said that the meaning of the key terms of the law are not yet settled, and that the university will not defend faculty who violate the law (e.g., violate the First Amendment). She asked whether the Provost's Office will unequivocally state that they will defend faculty who do their best to comply with the law, or will the university wait to see whether the faculty member's behavior is judged to be in compliance with the law. Provost Wickert said that when the material is germane and students have the opportunity to express different points of view, then that is fully supported. Secretary Butler repeated the concern: suppose that the material is germane – and Counselor Norton had said that faculty members are the best judges of whether content is germane – and students enjoy the freedom of expression, but someone raises a complaint. Will the university automatically have the faculty member's back or will they wait to see how the case is interpreted? Provost Wickert said that he does not engage with hypothetical

scenarios. He recommended that faculty look at the Provost's Office's record on supporting faculty, and they will be reassured by what they see.

Respectfully submitted, October 7, 2021
Annemarie Butler
Faculty Senate Secretary

As amended by the Executive Board on the 2nd November.

In the remaining meeting quorum was lost. Remaining announcements are attached as an addendum.

***Addendum**

5. Unfinished Business

None

6. New Business

Secretary Butler said at the last FS meeting in May, FS adopted a change to the U.S. Diversity requirement, requiring four new learning outcomes for courses that are designated as U.S. Diversity courses. Afterwards, the Provost's Office declined to immediately approve the new learning outcomes, citing the impending passage of HF 802. In July, FS Executive Board (EB) amended the U.S. Diversity Requirement to require at least three of the four learning outcomes. EB then voted to adopt these changes and sent it forward to the Provost and President for approval. Given the questions and concerns raised in the panel discussion, Secretary Butler said that she thought FS would disagree with EB's action. She moved to rescind EB's adopted amendment to FS's adopted motion. Senator Behnken seconded.

Senator Freeman raised a point of order: because quorum was lost, this motion was out of order. Parliamentarian Krief said that it was appropriate to raise the motion and second it, but that debate and vote could not take place without a quorum.

7. Announcements

7.1. Faculty Senate President

In the interest of time, President Wheeler abridged her prepared comments.

In May, FS adopted a change to the U.S. Diversity requirement. This was not approved by Provost Wickert, because the changes were at risk of violating HF 802. She stressed that not being able to sign is not the same as disapproval. There was growing public interest in the situation, including at the level of Iowa legislators. Inaction by FS would have had an impact at the level of the legislators. Executive Board moved and adopted an amendment, which makes minimal changes to what FS adopted. Instead of requiring U.S. Diversity courses to meet all four learning outcomes, the EB

amendment allows them to meet three or four of the learning outcomes. Absolutely no other change was made to what FS passed. The amendment does not prohibit faculty from offering classes meeting all four learning outcomes. This change provides students with choice, and allows the provost and president to sign off, and the senate can move forward with the updated diversity requirement. President Wheeler added that EB has the responsibility for senate decisions while full meetings are not in session. EB also has the responsibility to manage relationships with the administration and other organizations. The senate can countermand any action made by EB, and President Wheeler encouraged senators to pursue this action if they do not see merit or the benefit of this move by EB over the summer.

President Wheeler said that she admired all instructors for their work over the past 18 months of the pandemic. Faculty have provided students with a good education and kept the intellectual fires of the university burning. She stressed that many faculty feel unrecognized for their hard work.

President Wheeler said that she will be attending the public session of BOR meeting. She will talk to BOR colleagues. She looked forward to working with the full senate and encouraged senators to engage and participate.

7.2. Faculty Senate President-Elect

President-Elect Perkins said that he and President Wheeler will be speaking at the BOR meeting. They will talk about faculty concerns about how BOR handled COVID mitigation. They will work to coordinate their comments. Senators are welcome to e-mail him with suggestions about what to say.

7.3. Senior Vice President and Provost

Provost Wickert said that institutional enrollment was down 3.5%. The freshman class is up 62% over last year, which bodes well for the future. New graduate student enrollment is also up over last year. Non-resident student enrollment is up 18%. There were also increases in international student enrollment and U.S. multicultural student enrollment. The academic profile of the entering class is strong, and the freshman class is larger and more diverse.

BOR meeting will be on ISU's campus tomorrow. There will be a public comment session. Provost Wickert cautioned that BOR's schedule is fluid, and scheduled sessions may begin earlier or later, depending on how much time other parts of the agenda take. BOR will approve a new facility named with a major gift, and an announcement will go out tomorrow. This will be exciting news for campus.

Last year, ISU set a record \$559 million in external funding. Provost Wickert said that that was quite an accomplishment.

7.4. P&S Council

None

7.5. Student Government

SG President Campbell said that current issues include reviewing contracts relating to ISU Daily funding and the Committee on Lectures. Multiple funding items have come through, which indicates that student activities are returning to normal after the pandemic. SG is taking up an umbrella initiative by which students can check out an umbrella, like they would a calculator or

charger. SG will offer cooking workshops, to help students make nutritious, sustainable, delicious, inexpensive meals and combat food insecurity and decrease waste. SG is working with Facilities on the feasibility of gender-neutral bathrooms in Lied Recreation Center. At the Student Leaders Breakfast with BOR, SG leaders will discuss campus safety and sexual assault on campus. SG leadership will attend a meeting of Big 12 student governments in Waco, Texas. SG will also meet with city leaders, including Mayor Haila and Ames City Council.

7.6. Graduate and Professional Student Senate

None

8. Good of the Order

Senator Behnken asked senators to remember Jonah Glenn, an ISU graduate from 2020, who was riding his motorcycle and killed by a drunk driver. Jonah majored in history and social studies education. He loved learning and never missed a class. He tended bar at The Café. He was a really fun-loving, jovial person. He was everything we expect from ISU students: he came here, earned his degree, and was poised to do great things in the world, teaching a seventh-grade class in Salt Lake City. Senator Behnken said life is better for knowing him. Senator Behnken encouraged people to remember Jonah by the GoFundMe fundraiser in his honor.

9. Adjournment

The meeting adjourned at 5:38 p.m.

NEXT MEETING: Tuesday, October 12, 2021 – 3:30 p.m.

Sun Room, Memorial Union

Respectfully submitted, October 7, 2021

Annemarie Butler

Faculty Senate Secretary