

Indiana University
UNIVERSITY FACULTY COUNCIL
October 26, 2021
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1:30 P.M. - 4:30 P.M. (EST)

Members Present: Keith Anliker, Mark Baer, Angela Bruzzaniti, Rebecca Carlton, Rachael Cohen, Paul Cook, J Duncan, Shari Fowler, Philip Goff, Lucia Guerra-Reyes, Debora Herold, Israel Herrera, Kayla Isenbletter, Yu Kay Law, Sally Letsinger, Jiliang Li, Scott Libson, Wayne Madsen, James Marrs, Lindsey Mayo, Gin Morgan, Shawn Nichols-Boyle, Harold Olivey, Megan Palmer, Nasser Paydar, Cate Reck, Kristoffer Rees, Elaine Roth, Carol Rozelle, Steve Sanders, Susan Sciame-Giesecke, Marietta Simpson, Rebecca Spang, Melinda Stanley, Dave Surma, Lisa Thomassen, John Walbridge, Crystal Walcott, John Watson, Joe Wert

Members Absent: John Applegate, Ky Freeman, Cindy Evans, Bernadette Jessie, Leslie Miller, Mike Polites, Angie Raymond, Jennifer Thorington Springer, Pamela Whitten

Guests: Kip Drew, Jenny Kincaid, James Nussbaum

AGENDA:

1. [Approval of minutes of April 27, 2021](#)
2. **Executive Committee Business** (10 minutes)
Marietta Simpson, John Watson, and Joe Wert, Co-chairs of the University Faculty Council
 - [U1-2022: Membership of the UFC 2021-2022](#)
 - [U2-2022: University Faculty Council Committees 2021-2022](#)
 - [U3-2022: Summary of Actions Taken 2020-2021](#)
3. **Question/Comment Period** (10 minutes)
Faculty who are not members of the Council may address questions to President Whitten or Co-chairs Simpson, Watson, and Wert by emailing ufcoff@iu.edu at least two business days in advance of the meeting.
4. **Proposed Revisions to UA-03 Discrimination, Harassment, and Sexual Misconduct policy**
Jenny Kincaid, University Director of Institutional Equity/University Sexual Misconduct and Title IX Coordinator/University ADA Coordinator
Kip Drew, University Policy Officer
James Nussbaum, Associate General Counsel
[Action item]

- [Current UA-03, Discrimination, Harassment, and Sexual Misconduct](#)
- [U4-2022: Proposed amendments to UA-03, Discrimination, Harassment, and Sexual Misconduct](#)

5. **Proposal to make Juneteenth an Indiana University holiday**
[Action item]

TRANSCRIPT:

PEAR: Yeah. All right. I think that is everyone in from the waiting room. Joe Wert is the co-chair from IU Southeast. He's going to be running the meeting for us today. But I asked for a couple of minutes in advance just to go over a few Zoom meeting protocols.

First welcome to all of our new members and welcome back to everyone who is used to UFC meeting in this format. Just wanted to talk about a couple of things. First of all, we are going to be using the raised hand feature, so please familiarize yourself with where that is on your screen. We'll be keeping track of who would like to speak or offer amendments through that feature. The chat is available for those that would like to use it, but that is not going to an official part of the record. If you would like something to be officially a part of the meeting, we ask that you raise your hand and wait to be called on to add that.

Finally, votes today will be taken using the polling feature in Zoom. I ask for a little bit of patience as we try to get that as detailed and as accurate as possible for you guys. Those will be held open for about 15-20 seconds longer, if I see that more people need time to vote. So please when you see that prompt on your screen vote as soon as you can. Anyway, I will hand it over to Joe.

WERT: Okay thank you Elizabeth and welcome everybody to our first meeting of the academic year.

AGENDA ITEM ONE: APPROVAL OF MINUTES OF APRIL 27, 2021

WERT: First thing we do is approve the minutes from the April 2021 meeting. Can I get a motion on the floor to approve the minutes?

SIMPSON: Joe, Lindsey Mayo, has his hand.

WERT: Oh okay. Can I get a second?

COOK: I second.

WERT: Okay. Any additions to the minutes? Anybody?

Hearing none, all in favor of approving the last April minutes reply by saying aye.

UNIVERSITY FACULTY COUNCIL: Aye.

WERT: Opposed, say nay.

AGENDA ITEM TWO: EXECUTIVE COMMITTEE BUSINESS

WERT: Okay Executive Committee business. Any one on the Executive Committee, Marietta, or John, do you have any announcements or any message you want to give? Marietta or John?

SIMPSON: No. I don't have anything to add right now.

WATSON: Neither do I.

WERT: You do see on the agenda three documents. One is the membership of the UFC for the 2021-2022 academic year. One is the University Faculty Council Committees for 2021-2022 academic year. And then also a summary of what the UFC did in the previous year academic year. Any questions or comments about those documents? Okay.

AGENDA ITEM THREE: QUESTION/COMMENT PERIOD

WERT: So next we have the question/comment period. Questions for any of us. President Whitten is not here, generally, that's when you'd ask questions of her but she's not with us today. Any questions for any of us?

SIMPSON: Joe, I actually raised my hand.

WERT: Oh okay.

SIMPSON: I just wanted to raise my hand to say welcome to our new members who are with us today.

WERT: Anybody else? Okay.

AGENDA ITEM FOUR: PROPOSED REVISION TO UA-03 DISCRIMINATION, HARASSMENT, AND SEXUAL MISCONDUCT POLICY

WERT: Proposed revisions to UA-03 Discrimination, Harassment, and Sexual Misconduct Policy. I believe we have Jenny Kincaid, Kip Drew, and James Nussbaum with us.

KINCAID: Hello. How's everyone today? Nice to be with you today. I'm not exactly sure how you want to proceed, but I thought if it's helpful, I would just go briefly through the items and then if anyone has questions, is that acceptable? Okay.

So, I'll just take the items one by one. Just as background, many of you know that last year we had a significant revision of UA-03 policy, which is formerly just Sexual Misconduct Policy, and became Discrimination, Harassment, and Sexual Misconduct policy last year, last August. And that was as a result of the 2020 Title IX final rule change in regulations, which were significant and really only gave us a short timeframe last year. The regulations came out in May and had to be completed by mid-August. So, we worked with our Faculty Committee and got those revisions through and also added the discrimination and harassment procedures, which we really were lacking, and it needed to be added so that we weren't just funneling things to this Sexual Misconduct Policy procedures. So that was where we sort of ended up last year. And as has been the case really, since we started with the sexual misconduct policy, it's large. Things change both in the law and in our practices. And then we've had to periodically come back to UFC and with proposed revisions.

So, these revisions I know there was some back and forth about process, but we brought the revisions that we felt we needed to make for this year to the UFC co-chairs and then we were asked to then be on the UFC Executive Committee agenda. So that's how that came about. There really was just it's just a timing feature of trying to get these into place prior to this semester, if at all possible or early in the year. So that brings us to the revisions that we have here.

WERT: Would you like me to share my screen?

KINCAID: Yeah, or I can. I'm happy to do that.

WERT: Yeah, if you can do that.

KINCAID: Sure. One moment, let me get the right document. Okay. Are you able to see that? Not yet. Let's see. Does that show the memo to you?

WERT: Yes.

KINCAID: Okay. Great. So, the first proposed revision and the one that really drove us to consider the timing of coming to Executive Committee was a portion 2020 Title IX regulations that many people referred to as the suppression clause. But really that says that if someone does not appear at a hearing, that any prior statement that they had given cannot be used at all. And that meant that even if they didn't ask one question or didn't show up any prior statement that they had given perhaps to investigators, or the police could not be used.

There is some discussions, some institutions were even covering police reports, insane exams, where if the person responsible for the report couldn't be there, they would not use any of those materials. So that portion of the rules was actually vacated by Massachusetts Federal District Court decision back in August. And not only was it sort of struck down for those particular plaintiffs, but it was actually vacated, which is sort of a higher step to apply nationwide. And following that decision, the Department of Education. Issued an update in late August reading that the department will cease enforcement of that provision and that any of the OCR documents that had been issued would no longer apply. So immediately really some of the large groups came out and recommended removing this portion. Most of our Big Ten peers have already done that or are in the process of removing that. So that was the piece that really drove our timing concerns and trying to get that out because we have current cases where that would affect our hearings. So that provision appears in two places: in the student Sexual Misconduct Title IX procedures and in faculty and staff Title IX procedures.

Item two is a pretty simple and basic one. In the 65 plus pages, we simply miss this small paragraph and moving that over last year. We have not been using sexual history in the meantime or anything, but we really need to get this provision back in that just says, prior sexual history of the parties will be prohibited except in very limited circumstances.

Item three is an appeal deadline, so we have an initial assessment built into our discrimination harassment procedures and that's where we determine whether there is enough there to proceed with the discrimination harassment complaint. And if we don't decide to proceed, the

complainant has the opportunity to appeal that decision. We had just not put in a deadline and the 10 days aligns with our other deadline provisions.

When we did the policy updates last year, in order to track on the student side, we added a preliminary investigation report stage, which is the way it really goes on the student side. But it just simply has not worked on the faculty side, faculty, and staff side. Because what has happened is I think it's really affected respondents more than complainants. But I think that because we've had this preliminary report step where we don't also give any analysis or recommended finding that it's caused some respondents to feel like they have to go back, do more works, spend more time and money perhaps with an attorney, when I think we could give them the same 10-day period to provide any additional information. They're not losing any rights or information. Their just simply getting up front the analysis, and the recommended findings so that they can better respond. It would benefit complainants as well. But I think in our experience this past year, it's affected respondents more. So that appears in the academic appointee and staff university complaint resolution procedures and also in the Title IX complaint resolution procedures, with the only difference being that in the Title IX complaint resolution procedures, there's not a recommendation in the investigation report and that's because it would go to a hearing. Just as background, we have not had any Title IX employee cases that have gone to a hearing in the last year. It's really, it's a high bar on sexual harassment and the jurisdiction pieces. So, we have not had any hearings which we're grateful for.

Change five is regarding the definition of harassment. So, we frequently encounter cases where there is harassment or hostile work environment, but it's not on the basis of any protected class. And currently that's not laid out explicitly, covered in any other policies. So, we wanted to add that definition to this policy, but also indicate that that would be addressed by the appropriate human resources, academic affairs, or student conduct processes.

And finally, when we worked last year in our faculty group, we did have a representative from the graduate and professional group at IU Bloomington, Dakota Coates who is very involved. And then also brought back to that group the policy and got some feedback, I think from some cases that were in departments at Bloomington. And they presented and passed a resolution with a list of policy, and practice revisions, which are very well thought out. I think many of them would not, I think be able to accommodate the suggestions just because they got into personnel and confidentiality issues. But I think the overall gist of their concerns was when staff or faculty members have complaints against them or even findings, how does that affect the students that work with them? So, our proposed revision is to just add for the decisional official, the idea that consideration be given to how that faculty or staff member interacts with students in determining the course of action. So that is, that's the lists of our proposed changes and I'm happy to take any questions.

WERT: Questions or comments from the floor?

COHEN: Steve Sanders has his hand up.

SANDERS: Hi. Jenny, thank you for this. I wanted to make, well one point and then a question, on the item about expanding the definition of harassment to cover things other than protected

categories. I certainly understand the rationale for that. I guess I would ask that that be withdrawn or that that we break this apart and vote against that. Here's why, one, I think this sort of proposed language is a sort of band-aid. It acknowledges the problem but doesn't do it in a very detailed way. Secondly, on the Faculty Affairs Committee of the Bloomington Faculty Council, we're engaged right now in an overhaul of Bloomington Faculty Misconduct policy and Eliza Pavalko has urged us to also consider a problem she has referred to as bullying, which I think is related to the problem you've identified. I think we want to take that on. We want to see what other universities have done. We want to come up with a policy that is detailed and fits into an adjudication process and defines the kind of harassment that might take place that is not based on either sex or protected category. And I worry that putting this proposed language into the harassment policy, one might prevent us from doing something on the Bloomington campus because it might be argued to be in conflict with the UFC policy or second, if this is an issue then can it come to the UFC Faculty Affairs Committee and be developed in a more thoughtful, rigorous way, I guess not that what's here doesn't reflect thought, but I just worry it's kinda slapping a quick solution onto a problem that may require more thought, both about the substance and process.

For example, it also says, will be dealt with through academic affairs or human resources or student conduct processes. I think in Bloomington our sense is that that kind of conduct would be dealt with through the Faculty Misconduct policy, which sets out a procedure. Anyway, I don't want to belabor this, but again, I understand the rationale for it. But I think that identifies a problem that requires sort of greater thought and detail to address than simply adding the language that's proposed there.

I also had a question about the first provision, I don't know if you want to respond to that first.

KINCAID: Sure, I agree that wholeheartedly that we need to do more in the area of harassment on the basis of protected class, whether it's bullying or hostile work environment. And I think this is an attempt to reflect what we are already doing is when we get these, to take them seriously and then direct them back to the appropriate office. So, this happens all the time and this is what we do. We say, this is an issue for human resources. This is an issue for, currently it's handled by academic affairs. And I think then perhaps would be directed through a campus misconduct policy. So, there's certainly no attempt to prevent whatever the appropriate course is. And I think, I'm certainly open to any changes on that. And I do think it is because we don't have this anywhere. We have Title VII obligations as an employer and under the civil rights act in regard to hostile work environment. And I do think it's a hole that we have right now that we aren't sufficiently addressing. And so, I think what we do is we fall back on either Student Code, which is probably in the best shape, Code of Academic Ethics, which talks about the various forms of unprofessional behavior. So, we're trying to get there, but I think I absolutely agree that more work needs to be done. What our hope here is, was not really to have some sort of fix, but really to acknowledge that these are behaviors that we sometimes receive, that they are prohibited, and they will be addressed somewhere else. But I'm certainly open to any other ideas on and work on that one.

SANDERS: Okay. So, I guess then my only concern would be what I hear you saying is if this language was approved, it wouldn't sort of preempt or prevent the campuses from coming up with more specific policies for laying out, for example, that this comes to a faculty misconduct committee if it's egregious and that's the process that's used. So, this wouldn't prevent that?

KINCAID: No, none at all. In fact, I think I think we need more robust policies in this area and that would not be covered in our office.

SANDERS: Okay then personally, I'm okay with this with this language. The other thing, I'm sorry to ask two questions. Going back to the first policy, the cross-examination policy, I read the District Court decision. I, of course, read your memo. I appreciated the answers you put together privately to some questions I submitted to you yesterday. I guess I'm trying to understand and maybe colleagues here would benefit from understanding to a little more specifically, but the scenario in which this, the current policy is a problem, and the proposed policy would fix it.

I know that you had mentioned to the Executive Committee that there were pending cases where if this policy were changed, it would make a difference. Obviously, I realize for reasons of confidentiality, you can't talk about anything about the parties, but can you describe the circumstances that you're seeing or that are before your office right now to describe how this change in the cross-examination and elimination of prior (inaudible) policy would come into play and make a difference.

KINCAID: Sure. I'll be glad to. And then I'll probably ask James to comment on that as well. So, I think most generally, I could say that the ability not to appear at this point under the regs, under the 2020 regs has really outsized importance, in that it could become a really a method and a strategy for an attorney say, or to advise their clients, really either side. But let's start with respondents simply not to appear, not to participate. And I think that there's still, it's really just a return to what we were doing previously with cross-examination, cross-examination still exists.

The difference now is even, which the role will continue, that attorneys are now in the process, which I think already is pretty tough, I think, for a student, especially to sit there and handle. But that would still go on. But what would happen is if someone just chooses not to appear, then really perhaps anything they had said to police or to our investigators, perhaps indicating in some way that they are responsible, would simply not be able to be used. And it just what it does is creates a less fair process in that all the information that is available is not available to the panel. And it could really cut both ways in terms of either clearing a person for a finding of no responsibility. Let's say you have a complainant that is not very credible but doesn't show up and then sort of that the only information there is to the detriment of the respondent. And I think the other way around, probably the more likely way, is someone that advises a respondent simply not to show up. So, James, you want to talk about any more specific examples there?

NUSSBAUM: And Steve you said, make a difference. I just want to be clear. I don't know if we misspoke in the executive council. I don't think anybody intended, to make a difference, would mean to be outcome determinative or that we knew if it would change the outcome of any pending case. I guess, when I think about it's more process-based of what, of how we can defend

our process, right? That's kind of my line. And since a court now says this this provision is arbitrary and capricious, I think us continuing to implement and enforce that provision with that hanging over our heads puts us in a bad place going forward if somebody doesn't like the outcome. Kinda on either side really. I just think that it's pretty low hanging fruit for an attorney to say, look, you enforce that provision, my client at a bad outcome, therefore, because of this provision. And we kinda have to explain why we why we chose to continue to implement it in the face of this court decision and then the agent is saying, yeah, we're not going to enforce that anymore.

So, from my standpoint, it's a fair process. I think people could differ on that, but it's definitely a more defensible process and puts our universe in a better position.

SANDERS: Okay. I won't belabor this. I appreciate you both for your responses. I would just clarify, the policy was struck down not because in and of itself, the idea is arbitrary and capricious, as I understand it the ruling was when the Trump administration adopted it the process was deemed to be arbitrary and capricious because it didn't explain or take into account possible problems with the policy. I could be wrong, but that's my understanding of the administration, that wasn't a criticism of having or not having this policy. It was a criticism of how the Trump Title IX people had implemented or adopted the policy. Is that correct or not?

KINCAID: I didn't think it was. Did you James? I thought it was more because there are a lot of things in the regs that are still standing, and I think they had challenged more than this particular provision.

NUSSBAUM: Yeah.

SANDERS: Yeah. (inaudible) we're upheld. This is the only one that was struck down.

NUSSBAUM: The court holds the sections prohibition on all statements not subject to cross examination was arbitrary and capricious spoken. It really is that section of the regulation did self is, is arbitrary and capricious. The implementation of it.

SANDERS: Yeah. Yeah. Okay. Thank you.

WERT: Other comments? Questions?

Anything at all?

All right. John Walbridge?

WALBRIDGE: Yeah. I had a question about the standard of proof, the standard of preponderance of evidence, which is basically something at least that I, as a non-lawyer understand, is being used in civil cases are things like child custody where you have to decide for one way or the other. This is more of a sort of place, criminal proceeding where somebody is subject to quite, potentially quite damaging sanctions. My question is, why is the standard of proof so low instead of, let us say, clear and convincing, which I understand is the next step up. Is this something that is required by law or is this something unique to our particular process? Is it something that we have the authority to change?

KINCAID: Kip and James may have other comments on this as well. But I'll start, I think that during the Obama administration when the regs, the first really is guidance that point, the idea was that it was to be a preponderance of the evidence standard. In the 2002 regs, it was still permitted to be a preponderance but not required. I think our decision and working with the faculty council, faculty group last year was to keep the standard as of preponderance of the evidence. I think as far as I'm aware of, most all of our peers are preponderance of the evidence standard. I think to change that, we could of course survey that, but I think we would be out of step, I think with the majority of institutions doing this. And I would say that it's not really quasi criminal in the sense of, what people may be losing the ability to be present here. But I think when you think of civil law penalties it would be similar in terms of, you know, what the implications are in similar cases.

And I think again, Kip and James, may more, but I think the preponderance of the evidence standard really fits the type of proceedings that we have. And we do have many, many no findings. Preponderance is just that, if you have two people come in in a consent situation and what they have sort of opposing versions and there's really nothing else. That's a no finding and we have a lot of no findings on all of our cases a significant amount. So, I don't think it's a situation where it is unduly affecting the outcome of the cases. Our hearing panels and decisional officials receive training on evaluating evidence and credibility. And I think we have solid outcomes that using the standard. So, Kip and James, you want to talk more about that?

DREW: I was just going to say, I don't really have anything to add. I think Jenny's articulated it very well.

NUSSBAUM: Yeah. Same thing. It's a pretty standard practice among universities to use that standard. And I think we're in line with them on that. Again, if I standing in a legal way and it's been held up as is appropriate in our circuit and several other circuits. I think all of the arguments for whether or not it's the appropriate standard, I would just be echoing what Jenny said.

KINCAID: And I would say it tracks our other university policy for which there are procedures, similar procedures, which is research misconduct. That's also a preponderance of the evidence standard.

WERT: Other comments?

SANDERS: Just to respond to that briefly, Jenny. The Bloomington Faculty Affairs Committee is working on the Faculty Misconduct Policy. And actually, it has a clear and convincing standard which I don't imagine that we're going to change. And so that, I realize a lot of the other misconduct policies are preponderance. I would just add to John's point, I mean, civil processes where people face a significant loss of property or liberty such as terminating your parental rights, civil commitment, those do have a higher standard clear and convincing. I personally would make the argument for that here given the potential loss students may face. But I know that issue was not in front of us, but I just associate myself with John's concerns.

WERT: Comments?

LETSINGER: Hi. I don't have a lot of background on this and I'm just new to the UFC. So, I apologize if this is a dense question, but and I don't know if this question actually falls under Faculty Sexual Misconduct, but with the provision for not considering information on prior sexual history, prohibit information documenting predatory or inappropriate behavior by a faculty member at a previous institution, from being considered, especially if it established a pattern of behavior?

KINCAID: I don't believe so automatically. I think it's evaluated on an individual basis and typically where it comes up as a concern is in student cases to sort of use by either party against the other to either increase or diminish what their what their argument is in terms of responsibility. If someone has a prior finding a responsibility, whether it's at our institution or somewhere else. I think that's considered differently in the same way that if someone had a prior misconduct finding, that in terms of sanctioning that's taken into consideration. So again, these are really case by case, but yeah, there would be no automatic exclusion if the person had been found responsible of something previously.

You know, if it's just accusations and it was at another institution, again, that's a credibility determination and it's likely that that would not appear in a final report just again, on matters of relevance, there is a pretty significant relevance requirement. We haven't talked about that here. That's referred to even in that first section on cross examination. So, we have a pretty high bar in terms of only putting relevant things into the investigation report. That's I think where that determination would commend, but it's really not meant to refer to prior findings of responsibility.

LETSINGER: Okay. I was thinking of a very specific example that I know about that probably didn't have a finding associated with it, it had a child associated with it. But when things are claimed to be consensual, but there's a pattern of, you know, two or three of them. And then it comes over to our institution. It might not have a finding associated with it, but there's definitely a power imbalance kind of pattern going on.

KINCAID: Yeah. I think what we and those situations, what we tried to do is interview people as witnesses. So, if there's prior behaviors and people are willing to talk to us and speak to those. Again, assuming they're within sort of the scope of the immediate case. I mean, sometimes there's just information that doesn't follow from one institution to another. And also, the parties have rights as well to not have things brought in. So, it really is just a case-by-case determination, but what that prior sexual history role does is prevent the parties from expecting again it comes up most often in student cases, those prior behaviors to be in there and to affect the results.

LETSINGER: Thanks so much.

WERT: Steve your hands up again.

SANDERS: Just follow-up questions. Um Jenny, I was just noticing but UA-03 is still listed on the web as an interim policy. And you'd referred to a sort of rushed process by which this had to be done because of changing federal law last spring. Is this ever actually been true? UFC

formally or what is what distinguishes it as an interim policy? What still needs to happen to actually make it a permanent policy?

KINCAID: Well, I think that was part of our coming forward again with the expectations, I'll let Kip speak on this further, but coming to UFC exec and then expecting to be at the full UFC this fall. I mean, last year was a really strange year on many fronts. So, Kip, do you want to speak further? We would like to have the interim removed though.

DREW: Yes. And the rush was actually a function of the federal government dropping regulations in May. For those of you who are on the UFC last year, they dropped the regulations in May and required that all K-12 and higher eds have live policies in place ready to go on August 14th, which is A. it's a super short time. And B. it doesn't fit neatly into our UFC calendar. And so, in order to meet that federal deadline, we brought the 2020 revisions to the UFC Executive Committee, which is allowed by the bylaws. And at that time, we did say that we were going to make this an interim policy for an academic year.

So, for the 2020-2021 academic year, so that we had the benefit of a year's worth of experience and with the election in the middle of that and not knowing whether there was going to be a change of administration and if so, whether there was going to be a change in philosophy at the DOE. There were just so many layers of uncertainty that attended the adoption of the policy last year that we did put it forward as an interim for the last academic year. And then, you know, the academic year comes to a close and UFC doesn't meet again until literally, until today. And so, I want to apologize to the full UFC for a misstep on my part. When we put this this revision in front of the UFC Executive Committee, I didn't mean any disrespect to the full UFC at all. I was very focused on the idea that allowing exec to vote in lieu of the full UFC was a function of needing to take issues that needed action taken between regularly scheduled meetings of the UFC. And I was focused on the fact that there were cases that were pending. And again, to reiterate, not that it was going to change how cases got presented necessarily, but it's better for the parties, it's better for the students, in student cases, it's better for the institutions if people have the rules in place at the beginning of a process and not changed midstream.

And so, you know, so anyway, my focus really was on trying to use a procedural rule that was available to have action taken by the UFC exec between full UFC meetings. It wasn't a kind of a dodge on anybody's part in terms of presentation. And so really what we need to do to take off the interim, to have everything up to date is just for the full UFC to vote on this.

WERT: More comments? Nothing else?

Okay. All in favor of adopting this policy signify by saying aye.

UNIVERSITY FACULTY COUNCIL: Aye.

SANDERS: Are we doing a poll?

THOMASSEN: I thought we were doing a poll.

PEAR: I have a poll if that would be better.

SIMPSON: Yes. I think the poll would be better.

PEAR: The poll ended early. Did everybody get a chance? Yes? Not hearing anything, here you are.

WERT: Okay. It passes.

AGENDA ITEM FIVE: PROPOSAL TO MAKE JUNETEENTH AN INDIANA UNIVERSITY HOLIDAY

WERT: Next, we have a proposal to make Juneteenth an Indiana University holiday. This is not from the Executive Committee so it will need a motion to bring it to the floor.

LAW: Moved.

SIMPSON: Second.

WERT: Okay. There is a brief message from President Whitten. I'll just read it real quick. As Indiana University President, I recommend consideration and adoption of the Juneteenth holiday as part of the academic calendar beginning June 2022. And in addition to the academic calendar, Juneteenth will also be formally adopted as an official university for faculty, staff, and students. The designation of a university holiday provides the opportunity for reflection as campuses will be closed and also allows for commemoration through special activities and events.

Who was first? John Walbridge and then Yu Kay.

WALBRIDGE: A procedural question, is this something that requires a first second reading?

PEAR: I don't believe UFC has a first and second reading scheduled.

COHEN: We do not.

PEAR: Thank you.

COHEN: Because UFC has got so long of time between UFC requires two weeks agenda notice and no second reading.

WALBRIDGE: Thank you.

WERT: Yu Kay?

LAW: Yes. Hi. So, my question is, firstly I do support having Juneteenth as a university holiday. But I have heard both from our registrar and faculty that one of the big concerns they have is the loss of instructional time, particularly for this in the summer semester where there's already, there'll be two university holidays both with which would be a Monday this year in 2022. And so, there was some discussion of how this can be addressed. And a particularly since summer registration will begin for the regionals on November 1st. I don't know if Jeff Johnston, would like to comment on this?

JOHNSTON: Yes. I actually wound up with three holidays. Memorial day is on a Monday. Juneteenth falls on a Sunday which will be recognized on Monday. And Independence Day falls

on Monday as well this year. So, we will have three and correct, all the regional campuses begin summer registration on Monday. I've met with all the registrars, Bloomington and IUPUI begin registration in March, so they have more time to adjust their schedules. There'll be a lot of work that happens behind the scenes. But the short answer is that this is a university initiative and approved by the faculty.

The registrars can make it happen, but it's not ideal doing it after registration begins. We briefly looked at delaying registration, but a review of the student shopping carts showed students already have classes in their shopping carts. And although we can batch on enrollment appointments, we cannot remove them once they've been viewed by the student. So, we'd have to remove them manually if we did that. And frankly, we don't have time to remove them all. Registration will begin on Monday regardless for the regional campuses.

WERT: How long would it take, if we did approve it today, how long would it take to get (inaudible) before registration?

JOHNSTON: The short answer is it's impossible to get them before Monday. We have to coordinate with the faculty, the instructors, the departments. They have to identify how they're going to make up the instructional minutes, either by extending the class period or possibly scheduling Friday classes to make up for the missed Monday, possibly extending the session or the session an additional day (inaudible) round to a Monday. We don't have a standard calendar for summer. And so, it would vary by campus. We have a standard start date or two standard start dates for summer, but the session themselves vary quite significantly in the summertime.

WERT: Harold?

OLIVEY: Hi, thank you. I wanted to echo what Yu Kay said about thinking Juneteenth is a very important day to acknowledge and also want to expand on his concerns. Specifically, because in the summer, I and my colleagues teach laboratory courses and those courses meet once a week. And if the holiday falls on any day when one section of a laboratory courses meeting for a given course. That means the entire course has to lose that session. We can't have some labs, meaning in a given week and other sections not. That becomes very problematic in terms of timing for the course and really importantly, fairness for the students. And one of the courses I teach happens to be a 12-week course. And so, we would face the possibility in any given summer with missing up to three weeks of laboratory time if we add a third holiday. So, this becomes very problematic for laboratory courses. And if we add this holiday, I would hope that we would find a mechanism to allow instructors some leeway in terms of scheduling, you know, either alternative dates or maybe picking one of the three holidays based on the calendar needs of their particular class, especially for labs.

WERT: Yu Kay?

LAW: Okay. So, a couple of things. One, the trouble with changing the schedule, of course, is that we're doing so after students have begun registration. And my understanding is that it is not possible to say change the dates of summer break after the fact. Is that correct, Jeff Johnston?

JOHNSTON: I'm sorry. I was responding to a chat message. You said change in the summer break. The East campus does have a break between summer one and summer two. Not all campuses do that. Some campuses roll right into summer two directly from the end of summer one.

LAW: But we can't actually change the calendar dates after the students started registering and definitely not the class schedule.

JOHNSTON: We can adjust the schedule. Again, some students will be registered by time that schedule does get adjusted. Changing the calendar dates does present some challenges because financial aid has already been calculated for these students. If we extend the summer term, by even one day, anyone receiving financial aid and registering for the summer will have to be recalculated. So, the short answer is it can be done but it causes some grief for the financial aid team.

LAW: So, whereas if we just simply link the class period, or move days after the fact, there may be less implications?

JOHNSTON: That is correct, yes.

LAW: Okay. Thank you.

JOHNSTON: Thanks.

WERT: John Walbridge?

SIMPSON: I'm sorry. But actually, my hand is up next.

COHEN: Yeah, Marietta, is next.

WERT: Oh, I'm sorry, Marietta.

SIMPSON: So, I just want to be clear, Jeff, that you're saying that it is possible to do or it is not possible to do.

JOHNSTON: The short answer is if the faculty approve this, we can make this happen. But there will be quite a bit of work that happens behind the scenes to make this happen, as well as some students have already registered, their schedules will change in some cases. This occurred, it happened during the COVID-19 schedule adjustments. And some students were fine with other students were pretty vocal about it. So again, this first year will present challenges, but the short answer is we can make this happen.

SIMPSON: Okay. Thank you.

JOHNSTON: Thank you.

WERT: John Walbridge?

WALBRIDGE: I just was wondering whether there had been any systematic review of the implications of this before it was put to this council?

JOHNSTON: Informally, yes. We identified a number of courses that are subjects not meeting the structural minutes, labs, recitals, performances, etc. They were discussed as well that, you know, if they're missing a lab that's critical, that would be very difficult to make up in the absence of not rescheduling.

WERT: Steve Sanders?

SANDERS: So, Jeff I just want to be clear. You said, it'll take work, you guys are always great. It'll take work. It can be done. But is there a difference between like getting it done and getting it done in a way that is optimal. In other words, you can get it done. But does that solve Harold's problem with missing a lab session? I guess what I'm wondering is, if this were put off for a year, would that make a substantial difference in making sure that instructional days, lab days are not lost, students schedules are not disrupted and so forth? In other words, is there a difference between getting it done in a sort of, you know, like in getting it done in a way that maintains the integrity to the academic calendar?

JOHNSTON: Clearly having any year's notice buys us a lot of time. But the nature of summer enrollment, quite a few classes are online. And also, quite a few students don't register during the month of November for summer. So as far as the implication goes, there will be some scared of schedules being adjusted. However, the bulk of the students are registering for summer classes in the springtime. So again, ideally, yes, we'd like to have that year, but again, if the faculty and the university makes this a priority. It'll happen behind the scenes. Again, there'll be some pain points not going to sugar coat that one. But the short answer is yes, we can make this happen. But by having the full year, also considering, they can happen this year. We can consider lab classes and they may not get the lab on Monday, and they may have to come in on a special Friday or something to make up that time.

SANDERS: But could be done this year also?

JOHNSTON: Yes. And maybe a Saturday class, a onetime Saturday over the summer to make it happen as well. And that's where the students may have some push back.

WERT: Rachael Cohen?

COHEN: Sorry, I just want to be clear that we're talking about implementing a holiday going forward, that we will have a one-year pain point to implement that will affect everybody, not just students, faculty, staff, everyone. That is actually a federal holiday that the registrar says they can do. We all know it's going to be painful to do and we are really appreciative of their work. And I think we need to make sure that they know we are so appreciative of their work, but you know delaying it a year probably like, yes, it's helpful. But after COVID, I think the staff and faculty especially could use this. The students could use this. The country could use this. Like, let's take a step back here and say, we can figure that out. How do we figure this out and make this work for everybody?

JOHNSTON: Exactly. We can make this work out. Again, can it be done before Monday? No. Again, we have to work with the faculty teaching, for example, teaching the lab classes. Can they come in on a Friday and is it available on Friday? Et cetera. But again, we have some time, you

know, classes begin in May for summer. It's just the longer we make these changes the more students are going to be registered at that point.

WERT: Harold?

OLIVEY: Well, two things. One, I think delaying a year is a good idea and one reason is because this would give us as representatives time to actually vet this with our own faculty. I don't remember exactly when I first saw this come across, but it was not in time to be able to bring it up at our faculty governance meeting. So, I am very reluctant to support a proposal like this that has such sweeping change in terms of scheduling without input from my campus faculty.

Also, the idea of moving things to a Friday, well the problem is a lot of my students will be affected in summer. And again, I'm talking about a 12-week course in summer. These are students who many of them are working full time. So, they plan their schedules in summer, they plan their work schedules around the days when they know class is meeting, and when lab is meeting. And to arbitrarily say, Oh, we're going to have to add an extra one this Friday. Could present a major complication to our students. I'm not saying this is not resolvable, but I don't think resolution in time to plan for this coming summer is reasonable.

WERT: Marietta?

SIMPSON: Thank you. I would just like to say, I hear everyone's concerns and appreciate them, but I would also like to mention that, as Rachael said, this is a federal holiday. And I think Indiana University recognizing Juneteenth has very broad implications and beyond the classroom, I think it has greater significance in our community and across the country. And I think that if we have an opportunity to do that this year in light of not just COVID, but the other epidemic in our country that we all lived through and are currently living through. I think it makes a really strong statement from Indiana University and I think we should consider that as well as equally important. Thanks.

WERT: Kayla?

ISENBLETTER: Yeah. Hi. So, I just want to echo everything that Rachael and Marietta have said. And in my conversations with students about this is something that they see as very important. Anti-racism is a priority for the university and stuff like this would be the university kind of putting its money where its mouth is in showing that we affirm our black students and their history and the struggles that themselves and their families had been through. And I agree that there are going to be things that need work around, where I think those work rounds and that extra work behind the scenes are worth it to show our black students that we care about them and that we're willing to put in that work for them.

WERT: Rebecca?

SPANG: Hi, everybody. I support what Kayla and Marietta and Rachel have said. I mean, obviously, the federal government didn't ask us to consult our constituencies before it was made a federal holiday. It is now a federal holiday. And I understand, of course, the pressures on

students who plan their schedules very, very carefully. But I kind of thing that anybody who's scheduling their paid employment on a weekly basis probably hasn't scheduled for June yet at this point, we're just talking about putting this on the calendar for this coming June. And I agree, I think we should do it. And as somebody has commented in the chat, lots of things changed very much at the last minute through COVID, this is not so much at the last minute. We can make this work. Thanks.

WERT: John Watson?

WATSON: For what it's worth, the IFC voted this past Thursday, the IFC Executive Committee voted unanimously in favor of doing this.

WERT: James Marrs?

MARRS: I'd just like to echo in favor of this. Now that it's not just for the students, it's for everyone. And it's not just for the African American community, but for all of us to take advantage of this opportunity to learn and grow. So, I support it as well and I appreciate the comments from others supporting it.

WERT: Harold?

OLIVEY: I wanted to address the comment about changing work schedules. The problem is there's no way to communicate with students who were registering on my campus starting on Monday, hey, we're going to have an extra lab on this day. So, we're talking about letting these students know when the syllabus goes up sometime in May about this. I mean, these are practical considerations that need to be taken in. Again, I fully support Juneteenth. I think it's a great idea and I think it is workable. But I think forcing it this year. I don't see how that adds value to it. I think the value comes in recognizing it. And continuing work in anti-racist activities in our everyday life. And working together collaboratively, deliberatively to make this work rather than shoehorning it in.

WERT: Yu Kay?

LAW: Yes. In responding to Harold, I would say this, and I'm speaking from my perspective as chair of science on my campus as well. I would imagine that the only way from a regional campus standpoint is that we would basically look assuming this is passed. And this is my plan, assuming this is passed, sending a note straight to all the deans and have all the class schedules changed in the next three days.

WERT: James?

MARRS: Yes. I meant to throw in that I think that if this passes and if this is directed, then I think there should be some effort to be made to communicate with deans and others to make sure that there's flexibility and to suggest whatever remedies, like online lab, some other flexibility to allow students who would struggle with their schedules. There could be some direction given in addition to changing, rapidly changing. And I know it's a lot of work for the registrars and others. I just think it's important and it's already become a holiday. Some of these changes like on our campus that was it changed for the fall break to just be one day. And when I spoke with

students, I said, well, it was a choice between that and having a week off for Thanksgiving. And they said, oh, I didn't realize that was the choice, if that's the choice than I'm on board. So, I think sometimes communicating to the students more clearly and others, the staff and faculty to understand why we're doing this and what the choices are very important.

WERT: It looks like Nasser Paydar.

PAYDAR: Thank you very much. I appreciate the work of our faculty in the last half when we drop it because of COVID. I think what our faculty did is remarkable. We are here to educate students. I do appreciate all the difficulties that we've talked about labs and classroom. But in addition to classroom, you're teaching them in a different form by making statements, by showing what our values are, by picking up policies, we will change behavior. So, it is very important at this time in our history to make that statement to be what people want us to be. So, I do appreciate the difficulty. I think if people register for classes in November, but we don't have to wait until May. We will know who they are in those laboratories, and we could communicate that. But it is very important for us at this moment to make the statement that people expect from the university, Indiana University. Thank you.

WERT: So, I'll just say it seems like there are going to be a fairly small number of students who are really going to be effected. It's only going to be students on the regional campuses that choose to register for classes early. We can get this done. We can make the changes, necessary changes to the schedule fairly quickly. It won't be Monday, but fairly quickly. You know on our campus there are a lot who register, I can name students who jump on November 1st, and register for class. I'm wondering, and maybe this is a question for Jeff Johnston, would it be possible on the scheduling site to put a note on there saying "Juneteenth is now a holiday scheduling may change" or something like that?

JOHNSTON: Yes. Actually, I have a meeting scheduled with the registrars in the scheduling teams for tomorrow, in anticipation of this thing approved. And that's already been discussed. We have processes in place already to clearly add class notes to make this announcement. We also have practices in place that when a schedule changes, emails can be sent to the students that are affected. So, we dealt with this during COVID, we deal with this anytime, you know, a schedule changes, every semester some schedules change for various reasons. So yes again, we can work through this. But keep in mind some students, they've already placed classes in their shopping cart, and they may be thinking Monday they can push a button and register. And even making changes before Monday, the class in the shopping cart will change, but students may not be aware of it until they actually enroll. But again, we'll track which classes are affected and email students that we think are affected by it.

WERT: Steve?

SANDERS: I don't have a personal stake in this because it really doesn't affect the teaching that I do in my school, but I'm still trying to be sensitive to the concerns Harold and Yu Kay and to some extent, Jeff. I was going to propose an amendment. If it doesn't get a second, that's fine. But I wonder if some (in audible) that we will declare it a holiday immediately, that celebrations and commemorations should take place on all campuses. But that the only thing that will be

deferred for a year is not the recognition of the holiday, just the change in the class schedule because to be done in a proper and rational way that simply can't be dropped in at the last minute like this. So, we, the amendment would be make it a holiday. There are other federal holidays that we already have classes on, but that aside, make it a holiday, do everything else that would be done to recognize it, but defer the changes in the class schedule for a year. And if that gets a second, and it's worthy to debate, that's fine. If it doesn't, that's fine too. I just think we ought to acknowledge the concerns and either vote them up that we sympathize with them or vote down that we don't care about them.

OLIVEY: I will second the amendment.

WERT: We have a second. Any discussion on the amendment?

COHEN: Sorry is that Sue? You don't have your name listed so I can't guess.

SCIAME-GIESECKE: Yes, it is. Thank you. I just want to say as the chancellor of a regional campus, that I recognize that our students will be registering on November 1st. First of all, I think Jeff has already kind of affirmed that many students will not register on November 1st. It is a registration period both for spring and summer. So many will do their spring schedules, but perhaps not summer. Each of the regional campus chancellors have the ability at this moment, as soon as you would pass it, to send a message to all students to let them know that Juneteenth is now going to be a holiday and that classes will not be on that holiday and that schedules will be changed. Jeff, how soon can you get it done? So would we know that within a week the schedules would be changed, and we could alert our students to that. So, there is a mechanism for us to communicate with our students. If our students wait one week to sign up for their summer class in November and instead of in March, it would certainly not be a problem. So, I'm very supportive of it. I think we can get through what the regional campuses would experience. But Jeff, I'm just wondering how long would it take to make the change?

JOHNSTON: As far as actually making the change to an individual class it takes minutes. It is the coordination with the academic units to make sure that we have an appropriate amount of time. It's not necessarily extending it an extra day, it could be extending the lab time itself, you know 15-20 minutes a session. There'll be various strategies that are used to make up the instructional minutes. But yes, once those decisions are made, making the actual change to the schedule is pretty quick.

SCIAME-GIESECKE: Well, I think I could speak on behalf of all the chancellors that we're very supportive of this movement. And that we would work with the few classes that would be impacted by this and work with the deans and the chairs and with our students to make this happen. I think we're that problem simply because we have a tendency to register both spring and summer at the same time as an efficiency, but to take a little bit of extra time to alert our students to the changes but to make the statement, as Nasser said, is an important one. Thank you.

JOHNSTON: And the analysis has already begun as far as which classes will be affected, we're just waiting on the news, waiting for the formal approval that it's been approved. And again, we

can make this happen. Selfishly, on behalf of the registrar having a year would be great. But approving it today or in the near future, we can make this happen.

SCIAME-GIESECKE: We're well on our way.

WERT: John?

SIMPSON: John, you're muted.

WALBRIDGE: Yeah, and this is probably a naive solution to the problem, but June 19th is actually a Sunday next year, not a Monday.

JOHNSTON: But I believe we're recognized on Monday. That's the federal holiday practice that if it falls on a Sunday it is recognized on Monday. If it falls on a Saturday it is recognized on Friday.

WERT: Yu Kay.

LAW: I think given everything that is said. Thank you. And I will say this while, I know my registrar has given me a whole list of causes that could be affected. Most of them are online asynchronous. I think we will probably want to stress to faculty that there should be no change in the overall academic contact hour or workload on this holiday. And perhaps Steve, and I believe given what the assurances Jeff Johnson has given, particularly in terms of being able to reschedule classes. I would be inclined to say that we just simply starts Juneteenth in 2022.

WERT: Any other discussion on the amendment? Again, the amendment being to be declared a holiday, but to postpone the taking classes off that day to 2023. Anything else on that amendment?

Elizabeth, do we have a poll on the amendment? Or do we have a poll for that?

PEAR: That's a great question. I have two polls. The first one is on the amendment, it says, do you approve the proposal to make Juneteenth a holiday but defer changes in the class schedule to 2023? That's the way I understand Steve and Harold's amendment. If you vote yes for that and it passes, we are done.

If you vote no to that, I have a follow up that would be, do you approve the proposal to make Juneteenth an IU holiday and begin in 2022? Is that clear to everyone? Speak now.

I will launch the first. The amendment fails.

I will start the second vote. Just a moment.

WERT: I think we, is there anything anyone else would like to say about original proposal then?

Are we ready to vote on that?

SIMPSON: Yes.

PEAR: The proposal passes.

Okay. The Juneteenth holiday passes with its original proposal. I think that concludes the business for today. Can I get a motion to adjourn?

SIMPSON: So, moved.

COHEN: I second.

WERT: All in favor?

UNIVERSITY FACULTY COUNCIL: Aye.

WERT: We are adjourned Thank you very much everybody.