



October 11, 2021

Dean Kevin Washburn
University of Iowa College of Law
130 Byington Road
Iowa City, Iowa 52242

Sent via Electronic Mail and U.S. Mail (kevin-washburn@uiowa.edu)

Dear Dean Washburn:

FIRE¹ is disappointed not to have received a response to our letter of October 12, 2020. Our letter, which is enclosed, expressed concern for the academic freedom of faculty members at the University of Iowa College of Law (“Iowa Law”) based on a proposal by the Iowa Law Anti-Racism Action Committee (“Anti-Racism Committee”). That proposal recommended that the law school include a question on faculty evaluations asking how faculty have advanced diversity, equity, and inclusion (“DEI”).

FIRE learned from a public records request that this question has been implemented in faculty evaluations, and that the university intends the question to be voluntary.

Although FIRE appreciates that Iowa Law does not intend the question to be mandatory, we remain concerned that faculty members will reasonably interpret it that way. Further, the text of the prompt raises concerns that it will operate as an ideological litmus test for faculty, impinging their academic freedom and freedom of conscience.

The Iowa Law “Clinical Faculty Self-Evaluation Instructions,” the “Faculty Self-Evaluation Instructions,” and the “LAWR Faculty Self-Evaluation Instructions,”² list topics for faculty to include in a written statement to be discussed during their evaluation. It asks faculty to “please try to address some or all of the subjects listed below,” including “Diversity.” It says:

The Iowa Law Anti-Racism Committee has encouraged me to ask each faculty member to identify any contributions you have made

¹ As you may recall from past correspondence, the Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America’s college campuses.

² FIRE obtained these through a public records request. The records request, University of Iowa’s response, and each of the self-evaluation instructions are enclosed.

to improving our law school community in the areas of diversity, equity and inclusion. Please do so.

Although Iowa Law does not intend this question to be mandatory, faculty members may reasonably believe that they *must* include a statement of contributions to DEI or else they may be penalized. This is especially true considering that “diversity” is the only topic that concludes with a sentence directing faculty to include the topic—“Please do so.”

While there may be an acceptable and viewpoint-neutral way to recognize faculty members’ voluntary contributions to diversity and inclusion within the academic setting, the text of the prompt leaves faculty members little assurance that their response—or lack of response—will be evaluated without respect to viewpoint, given the prompt’s compulsory language and absence of sufficiently precise and objective definitions of “diversity,” “equity,” and “inclusion.” Absent more, these terms, which carry salient political connotations that are the subject of much debate and controversy, may serve as proxy for particular viewpoints or beliefs.

At a minimum, Iowa Law must amend the prompt to state clearly that it is voluntary *and* applicants won’t be penalized for declining to answer. The prompt should also expressly state that responses will *not* be evaluated on the basis of viewpoint.

For example, an acceptable prompt might read, “If interested, please use this space to discuss any contributions you have made to the law school community in the areas of diversity and inclusion. Responses will not be evaluated on the basis of viewpoint, and there is no penalty for declining to respond.” FIRE would be happy to help Iowa Law amend the prompt’s language.

We would appreciate receipt of a response to this letter by October 25, 2021, confirming that Iowa Law will revise its faculty self-evaluations to avoid violating faculty members’ academic freedom and freedom of conscience.

Sincerely,



Sabrina Conza
Program Analyst, Individual Rights Defense Program

Cc: Neda Barrett, Senior HR Director & Director of DEI and Global Engagement

Encl.



October 12, 2020

Dean Kevin Washburn
University of Iowa College of Law
130 Byington Road
Iowa City, Iowa 52242

Sent via Electronic Mail (kevin-washburn@uiowa.edu)

Dear Dean Washburn:

The Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

FIRE is concerned about a proposal that, if adopted, would seriously threaten the expressive rights and academic freedom of the University of Iowa College of Law's faculty. The proposal, which was created by the Iowa Law Anti-Racism Action Committee ("Action Committee"), includes a number of recommendations for how to advance diversity and inclusion at Iowa Law.¹ We appreciate that these are only recommendations, but your statement that "[w]e will be implementing [as] many of these ideas as we can soon"² suggests that the university may adopt this proposal.³

Of particular concern to FIRE is the report's proposal to "[i]nclude a question on the annual faculty/staff evaluation form that asks what the employee has done to advance the university's mission to create an inclusive community."⁴ The proposed recommendations suggest that Iowa Law:

Add a question to the annual faculty evaluation form that asks what the employee has done to advance the university's mission to create "an inclusive community in which people of different

¹ Iowa Law Anti-Racism Action Committee, *Recommendations*, UNIV. OF IOWA COLL. OF LAW, available at <https://law.uiowa.edu/sites/law.uiowa.edu/files/2020-09/ILARAC%20RecommendationsFINAL.pdf>.

² *Iowa Law Antiracism Committee Works Toward a Bold Plan for Action*, UNIV. OF IOWA COLLEGE OF LAW, Sept. 3, 2020, <https://law.uiowa.edu/iowa-law-antiracism-committee-works-toward-bold-plan-action>.

³ FIRE takes no position on the balance of the proposals.

⁴ Iowa Law Anti-Racism Action Committee, *supra* note 1.

cultural, national, individual, and academic backgrounds encounter one another in a spirit of cooperation, openness, and shared appreciation.”

FIRE has little doubt that this proposal represents a well-intentioned effort to better serve the Iowa Law community. However, such a mandate risks establishing an ideological litmus test for evaluating professors, which could impact promotion and tenure consideration, and presents a number of issues.

First, the key terms defined in these recommendations, and laid out in the University of Iowa’s *Excellence through Diversity, Equity, and Inclusion Action Plan*, lack precision. These terms—“diversity,” “equity,” and “inclusion”—are not defined in a sufficiently objective manner to be applied in a viewpoint neutral way, leaving room for the terms to be used as a proxy for particular viewpoints or beliefs.

Even if unintentional, impermissible viewpoint-based outcomes are unfortunately easy to imagine. For example, conservative professors—believing that their views are not widely represented at Iowa Law—might argue that attending the Conservative Political Action Conference (CPAC) would contribute to diversity of thought, as recommended by the Action Committee. Other professors, however, possibly including those in the position of administering or reviewing the evaluations, may be displeased to learn that a conservative professor claimed that attending CPAC contributed to diversity at Iowa Law, and thus refuse to credit it. The many possible variations on this problem illustrate the threat of the vague definition.

According to the report, equity “means acknowledging and addressing structural inequalities—historic and current—which advantage some and disadvantage others.” This definition, however, does not clarify how professors are meant to acknowledge and address these disadvantages. This invites subjective determinations by administrators tasked with reviewing faculty evaluations, violating First Amendment and academic freedom protections guaranteed to faculty. The same can be said of the definition of inclusion. How is a faculty member to “creat[e] inclusive environments”? And how is a faculty member to know or assume community members’ subjective opinions—if they “feel respected” and “have a sense of belonging”—which the Action Committee laid out as a metric in determining whether a faculty member has created an inclusive environment?

FIRE is concerned that faculty members with dissenting or simply unpopular views will be at a marked disadvantage when being evaluated for tenure or other promotions. Without more, vague and amorphous terms like “inclusion” will necessarily signify different meanings and conceptual frameworks to different people—effectively leaving decisions regarding the satisfaction of these criteria to the discretion of the evaluator and thus inviting subjective and arbitrary decision-making. This discretion will all but inevitably be abused to punish views at odds with popular sentiment or the views of those tasked with evaluating a faculty member’s commitment to “diversity,” “inclusion,” and “equity.”

To illustrate our concern by analogy, we trust that your office would readily recognize the problem with rewarding faculty members who demonstrate “contributions to patriotism.” Just as with “diversity” and “inclusion,” evaluating broad, subjective terms like “patriotism” requires an inherently political, viewpoint-dependent calculation. Without a careful, viewpoint-neutral specification of what these evaluative criteria will mean in practice, faculty members with personal or professional beliefs and commitments that differ from those of their peers or evaluators will be penalized.

FIRE’s second concern centers on the recommendation that a question about diversity and inclusion be included in faculty evaluations. We understand that this question would be added to faculty members’ annual self-evaluation—which currently asks about teaching, scholarship, and service—that is submitted to the Dean as “part of each faculty member’s annual review.”⁵

We again recognize the good intentions behind this element of the proposal. We also recognize the tension between an individual faculty member’s right to make pedagogical decisions and the shared responsibility of an institution and its faculty to determine “who may teach, what may be taught, [and] how it shall be taught[.]” *Sweezy v. New Hampshire*, 354 U.S. 234, 263 (1957) (Frankfurter, J., concurring). But we caution that the proposal’s uncertain, subjective terms might redound to the detriment of faculty members’ academic freedom.

We understand that the committee has not proposed to require faculty to demonstrate certain actions in support of “diversity and inclusion” as an express condition of employment or promotion. But explicitly including this question in an annual evaluation—leaving room to reward such participation or penalize its absence—is a worrying step toward a similar result.

We write you today to ask that the University of Iowa College of Law consider the consequences of this proposal on those faculty whose views, pedagogical choices, or associations are unpopular or simply out-of-step with the majority on- or off-campus. To protect academic freedom, meet the university’s legal obligations, and to honor the individuality of the Iowa Law faculty, we urge you not to implement this recommended policy.

We appreciate your time and attention to our concerns.

Sincerely,



Sabrina Conza
Program Analyst, Individual Rights Defense Program

Cc: Adrien Wing, Associate Dean and Anti-Racism Action Committee Chair
Neda Barrett, Senior HR Director & Director of DEI and Global Engagement

⁵ *Id.*



Sabrina Conza <sabrina.conza@thefire.org>

Iowa Open Records Law to University of Iowa

Sabrina Conza <sabrina.conza@thefire.org>

Fri, Jul 30, 2021 at 12:48 PM

To: public-records@uiowa.edu

To whom it may concern:

This is a request for the following records pursuant to the Iowa Open Records Law (Iowa Code §22.1, *et seq.*).

Records Requested:

Any policies, guidelines, or other guidance concerning any requirement that law school faculty submit a statement of their perspectives on and/or contributions to diversity, equity, inclusion, or related concepts as of the date of this request.

Fee waiver request: This request is made on behalf of the Foundation for Individual Rights in Education, a nonprofit and nonpartisan organization that works to preserve civil liberties on college campuses. We request a waiver of any fees or costs associated with this request.

This request concerns a matter of public interest. The public has an interest in understanding whether public universities like the University of Iowa require faculty to commit to certain viewpoints or support certain concepts. The records are not sought for a commercial or personal interest, but rather for the purpose of providing the public with information concerning civil liberties in higher education.

Request for expedited processing: The records pertain to a matter of public importance and current debate. Providing expedited production of the records will facilitate the public understanding of these matters before they are fully resolved. Any undue delay in production will undermine the purpose of the public records laws, which serve to allow public input and oversight of government affairs.

Request for Privilege Log: If any otherwise responsive documents are withheld on the basis that they are privileged or fall within a statutory exemption, please provide a privilege log setting forth (1) the subject matter of the document; (2) the person(s) who sent and received the document; (3) the date the document was created or sent; and (4) the basis on which the document is withheld.

Please note that this request does not seek a search of faculty or student email accounts or records. These requests should in no way be construed to include a review or search of email accounts, websites, or other forms of data or document retention which are controlled by students, alumni, or faculty members, nor by governmental or advisory bodies controlled by the same, except insofar as any such individuals also serve in an administrative capacity and the records were created or are held by the individual in that capacity. Any search should be limited to documents held by the administration and/or its staff members, including records created or maintained by persons acting in the capacity of administrators or staff members.

If I can be of assistance in interpreting or narrowing this request, please don't hesitate to ask.

Best,

Sabrina Conza

Program Analyst, Individual Rights Defense Program
Foundation for Individual Rights in Education
510 Walnut Street
Suite 1250
Philadelphia, PA 19106
(215) 717-3473
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Sabrina Conza <sabrina.conza@thefire.org>

Iowa Open Records Law to University of Iowa

UI Public Records <public-records@uiowa.edu>

Thu, Aug 26, 2021 at 3:27 PM

To: Sabrina Conza <sabrina.conza@thefire.org>

Sabrina,

We received your request for “*Any policies, guidelines, or other guidance concerning any requirement that law school faculty submit a statement of their perspectives on and/or contributions to diversity, equity, inclusion, or related concepts as of the date of this request.*”

According to our College of Law officials, there is **no requirement** that faculty submit such a statement. However, following **recommendations made by the Iowa Law Anti-Racism Action Committee**, the self-evaluation performance review forms for College of Law faculty were updated to include contributions made to diversity, equity and inclusion as a subject for discussion that faculty may choose to address in their evaluation. Attached are the self-evaluation request forms.

We will consider your request closed. Please let me know if you have any questions.

-Ann Goff

Ann Frances V. Goff

Director of Legislative Operations and
Project Management
Transparency Officer
The University of Iowa
351 Plaza Centre One
Iowa City, IA 52242 | Tel: 319-335-0270

NOTICE TO RECIPIENT: THIS MESSAGE AND ANY RESPONSE TO IT MAY CONSTITUTE A PUBLIC RECORD, AND THEREFORE, MAY BE AVAILABLE UPON REQUEST IN ACCORDANCE WITH IOWA PUBLIC RECORDS LAW, IOWA CODE CHAPTER 22.

[Quoted text hidden]

3 attachments



2020 Clinic Faculty Self-Evaluation Request Form.docx

21K



2020 Tenured-TenureTrack Faculty Self-Evaluation Request Form.docx

21K



2020 LAWR Faculty Self-Evaluation Request Form.docx

21K

Iowa Law
Clinical Faculty Self-Evaluation Instructions
Fall 2020 (due September 28, 2020)

In preparation for a one-on-one meeting with me via phone or Zoom in the next 90 days, please prepare a short memorandum or email detailing the highlights of the past year. Because each faculty member has slightly different responsibilities, only you can determine the scope of your response, but please try to address some or all of the subjects listed below.

Accomplishments: Please identify your most significant accomplishments of the 2019-2020 academic year.

Teaching: Please discuss your program of instruction and identify which aspects are most effective and which, if any, need improvement. Please review your student evaluations for each course and comment as you think appropriate. (Your spring 2020 evaluations will not be considered for evaluation purposes, but you may comment on them if you wish).

Service: I know the law school committees on which you served, but please highlight any special accomplishments that should not be overlooked. Please identify any other significant service to the College of Law, the University, or the academy or community more broadly, such as CLE seminars, committee work, or other service for legal or academic communities. Please identify academic conferences in which you were an organizer, panelist, or presenter. Please also note any Congressional, legislative, or other testimony. Please explain whether you were a faculty advisor for 1L students and describe the strategies you used.

Diversity: The Iowa Law Anti-Racism Committee has encouraged me to ask each faculty member to identify any contributions you have made to improving our law school community in the areas of diversity, equity and inclusion. Please do so.

Challenges: Please identify the greatest challenges that you face going forward (and how the College of Law can help you address them).

Aspirations for 2020-21: Please identify your goals and aspirations for the coming year.

For our discussion, I also welcome hearing your hopes and dreams for the College of Law and how we can work together to move this institution forward.

Thank you in advance. I look forward to meeting with you.

Iowa Law
LAWR Faculty Self-Evaluation Instructions
Fall 2020 (due September 28, 2020)

In preparation for a one-on-one meeting with me via phone or Zoom in the next 90 days, please prepare a short memorandum or email detailing the highlights of the past year. Because each faculty member has slightly different responsibilities, only you can determine the scope of your response, but please try to address some or all of the subjects listed below.

Accomplishments: Please identify your most significant accomplishments of the 2019-2020 academic year.

Teaching: Please discuss your program of instruction and identify which aspects are most effective and which, if any, need improvement. Please review your student evaluations for each course and comment as you think appropriate. (Your spring 2020 evaluations will not be considered for evaluation purposes, but you may comment on them if you wish).

Service: I know the law school committees on which you served, but please highlight any special accomplishments that should not be overlooked. Please identify any other significant service to the College of Law, the University, or the academy or community more broadly, such as CLE seminars, committee work, or other service for legal or academic communities. Please identify academic conferences in which you were an organizer, panelist, or presenter. Please also note any Congressional, legislative, or other testimony. Please explain whether you were a faculty advisor for 1L students and describe the strategies you used.

Diversity: The Iowa Law Anti-Racism Committee has encouraged me to ask each faculty member to identify any contributions you have made to improving our law school community in the areas of diversity, equity and inclusion. Please do so.

Challenges: Please identify the greatest challenges that you face going forward (and how the College of Law can help you address them).

Aspirations for 2020-21: Please identify your goals and aspirations for the coming year.

For our discussion, I also welcome hearing your hopes and dreams for the College of Law and how we can work together to move this institution forward.

Thank you in advance. I look forward to meeting with you.

Iowa Law
Faculty Self-Evaluation Instructions
Fall 2020 (due September 28, 2020)

In preparation for a one-on-one meeting with me via phone or Zoom in the next 90 days, please prepare a short memorandum or email detailing the highlights of the past year. Because each faculty member has slightly different responsibilities, only you can determine the scope of your response, but please try to address some or all of the subjects listed below.

Accomplishments: Please identify your most significant accomplishments of the 2019-2020 academic year.

Teaching: I will ask the registrar to share with me your courses, number of credit hours, and enrollments. Please describe substantive changes in your teaching philosophy over the last nine months. Please describe how the move to virtual learning has impacted your hopes and dreams for the future. Please review your student evaluations for each course and comment as you think appropriate. (Note that any student ratings for the spring 2020 semester will not be used for any evaluative purposes by me.)

Scholarship, Research, and Grants: Please list all publications occurring from May 1, 2019, through August 15, 2020, and identify any significant works in progress and expected dates of completion of those works. In addition, identify and describe any other significant work by you, such as briefs or grant-funded research. If possible, please attach a web link or pdf of your scholarship and any other documents you wish to share with me.

Service: I know the law school committees on which you served, but please highlight any special accomplishments that should not be overlooked. Please identify any other significant service to the College of Law, the University, or the academy or community more broadly, such as CLE seminars, committee work, or other service for legal or academic communities. Please identify academic conferences in which you were an organizer, panelist, or presenter. Please also note any Congressional, legislative, or other testimony. Please explain whether you were a faculty advisor for 1L students and describe the strategies you used.

Diversity: The Iowa Law Anti-Racism Committee has encouraged me to ask each faculty member to identify any contributions you have made to improving our law school community in the areas of diversity, equity and inclusion. Please do so.

Challenges: Please identify the greatest challenges that you face now or that you faced in the last year (and how the College of Law can help you address them).

Aspirations for 2020-21: Please identify your goals and aspirations for the coming year.

For our discussion, I also welcome hearing your hopes and dreams for the College of Law and how we can work together to move this institution forward.

Thank you in advance. I look forward to meeting with you.