THE MINUTES OF THE EXECUTIVE COMMITTEE

OF THE ACADEMIC SENATE

CALIFORNIA STATE UNIVERSITY, FRESNO

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June 4, 2021

Members present: Raymond Hall (Chair), Tinneke Van Camp (Vice Chair), Kathleen Dyer (Universitywide), Thomas Holyoke (past chair), D’Aungillique Jackson (ASI Executive President), Rebecca Raya-Fernandez (At-Large), Susan Schlievert (Statewide)

Members excused: Jennifer Miele (At-Large)

Guests: Venita Baker (Academic Senate), Xuanning Fu (Interim Provost), Darryl Hamm (CSU General Counsel), Jim Marshall (Dean of Research and Graduate Studies and Assistant to the Interim Provost), Marsha Baum (AVP Academic Affairs)

The meeting was called to order by Chair Hall at 11:05 am on Zoom.

1. Approval of the Agenda.

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1. Approval of the Minutes 4.19.21

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1. Communications and Announcements.

None

1. Meeting with CSU General Counsel Darryl Hamm concerning vaccination requirements.

**Dr. Fu** called a short meeting of the executive committee with Darryl Hamm (CSU General Counsel) to discuss the tentative draft of a university wide policy on the requirement of a COVID-19 vaccination, needed to implement the announcement of the Chancellor in April 2021 that a COVID-19 vaccination will be required of students, faculty and staff in order to access the campus, at the beginning of the Fall semester, or when one of the vaccines receives full FDA approval, whichever is later. The implementation policy is being developed at the Chancellor’s office (shared with executive committee members after today’s meeting; ‘Proposed COVID-19 Vaccination Interim Policy’). Dr. Fu emphasizes that this is a draft only, and changes will likely be introduced, *e.g.* through a bargaining and revision process.

**Hamm** provided more information on what is in the policy, more particularly on self-attestation and follow-up requirements being considered for collection of information on vaccination. Self-attestation would include three options for students, staff and faculty to indicate: person identifies as being vaccinated, indicates religious exemption, or indicates medical exemption. Self-attestation would be submitted to a higher level (*e.g.*, student public health, HR or Faculty Affairs). Only a self-attestation would be required (no documentation) to avoid legal entanglements and privacy issues. An electronic system for self-attestation is being explored.

Campuses could go beyond this CSU policy if they so require. *E.g.*, campuses could decide that they want proof of the vaccination, such as a copy of the vaccination card, bearing in mind that this comes with privacy issues, administrative issues and need to check for fraudulent documentation. Additional local bargaining would then also be needed.

**Hall** asked whether the CSU does not already require certain vaccinations?

**Hamm** explained that these are embedded in EO 803. EO 803 includes medical, but no religious, exemptions. The proposed COVID-19 Vaccination Interim Policy includes religious exemptions due to where the Supreme Court is at.

**Hall** asked what is needed for the FDA to remove the emergency label for COVID-19 vaccines.

**Hamm** explained that that is not entirely clear. There is optimism that this will happen before fall but nothing tangible to date, so now working on a policy for a vaccination requirement ready for roll out once full approval is awarded to a vaccine by the FDA.

**Jackson** wondered why we cannot make the COVID-19 vaccination part of the immunization cards that are already in place.

**Hamm** responded that these depend on State law. The vaccinations included on the immunization card are State mandated and COVID-19 immunization is not State mandated yet due to its emergency authorization only status – unless legislature moves COVID-19 immunization to this list.

**Holyoke** asked about the consideration of penalties for non-compliance. **Hamm** explained that existing policies on disciplinary consequences for employee or student failure to comply with campus policies could be used. But he repeated a preference for prioritizing incentives to provide self-attestation (about being vaccinated, claiming medical exemption or claiming religious exemption), and, if someone is not vaccinated, looking at how to accommodate this person (*e.g.* consider daily testing or other rigorous process for being on campus). The policy could include disciplinary consequences, but the aim is to incentivize and accommodate rather than penalize.

**Holyoke** mentioned the news that Cal/OSHA stated that all State staff will have to wear a mask if not all employees are vaccinated.

**Hamm** responded that, if that is the case, we would need to comply with it.

**Schlievert** asked whether a signed self-attestation would be considered to be a legal document.

**Hamm** explained that it would not be legal necessarily, but could be used to hold someone accountable if, for instance, they lied on it.

**Raya Fernandez** suggested considering an incremental approach (*e.g.*, a probationary period with increments over the course of a few years) to accommodate distress about the COVID-19 vaccine (*e.g.*, some people want to wait for more evidence on the safety of the vaccine), which may facilitate endorsement by the campus community.

**Hamm** explained that we now have an overarching policy that vaccination will be required once it is fully approved by the FDA so we need a policy for its implementation. The first year following full approval of a COVID-19 vaccine could be a trial year for a self-attestation policy. Eventually California legislative changes may happen as well to include COVID-19 immunization on immunization cards for schools and universities.

**Dyer** wanted to know what exactly people will attest to. If we want to encourage people to get the vaccine (more particularly people who do not have exemptions), we may need to ask for an explanation rather than allowing them to check a box (and potentially wrongfully claim a religious or medical exemption), which seems rather easy to do.

**Hamm** explains that if there would be hint of abuse of the medical or religious exemption claims, we would need to do something about this, but there would be legal issues with asking for private medical information and issues with record keeping.

**Dyer** referred to the availability of the existing immunization card, which contain medical information.

**Hamm** explained that these immunization cards depend on State legislature. The COVID-19 vaccine cannot yet be treated like the vaccines under EO 803 because these have been fully approved, as opposed to the COVID-19 vaccine, which is still only approved under emergency authorization.

**Hall** referred to the resolution passed by the Academic Senate at California State University, Fresno, in May 2021, to require all students, faculty and staff to be vaccinated against COVID-19 before the fall (Resolution regarding Hazardous Work and Study Environment, May 3 2021). In the justifications for the resolution reference is made to the upcoming requirement to update EO 803 (in July 2021) as well as legal precedent to add vaccinations to the vaccination requirements. This resolution passed with large support. With this resolution, the Academic Senate indicated that they want vaccination enforcement through a change in the EO 803 – is the Chancellor looking to make that chance?

**Hamm** mentions that a mandate would potentially violate freedom of religion and access to education, amplified by Supreme Court protection of religious exemption for COVID-19 measures.

**Schlievert** suggested that we could ask for a formal letter from a physician when someone says that they cannot have the COVID-19 vaccine for medical reasons, without providing specific details about that exemption. Also, we could consider giving away parking passes to incentivize members of the campus community to get the vaccine.

**Hall** wanted to know what the chances are of meaningful enforcement. **Hamm** explained that the emphasis in the policy would be on incentivizing to get the vaccine rather than on enforcement. But the policy would be structured so that there is some kind of means to identify who is not complying. The goal is to maximize compliance. Not sure what penalties could be used. The aim is to get members of the campus community educated and motivated for the greater purpose and only use discipline if needed.

**Hall** added that this is a dangerous disease and we need to protect students, staff and faculty.

**Dr. Fu** will convey what was mentioned in today’s meeting to the Cabinet and the Chancellor’s office. This conversation will continue and we need to shoot for the highest level of safety, with Hamm’s legal advice. The Chancellor wants us back on campus in person as much as possible but we then need a policy to keep everyone safe – these two go together. More communication will probably transpire after June 15, when new guidance from the CDC, for instance, is expected.

1. Support Fresno State’s flying of the rainbow Pride flag in support of diversity and our LGBTQ+ community - request from President Jiménez-Sandoval.

Hall explains that President Jiménez-Sandoval was seeking the Academic Senate’s approval to fly the rainbow Pride flag in support of diversity and our LGBTQ+ community, and, if approved, would we approve to fly it for two weeks.

The members of the Executive Committee approve to fly the rainbow Pride flag.

**Jackson** suggested to fly it for the duration of the full Pride month.

The Executive Committee approved.

**Hall** will convey to President Jiménez-Sandoval to fly the rainbow Pride flag for as long as possible.

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The Senate Executive Committee adjourned at 12:15 pm.

The next meeting of the Executive Committee will be held over the summer as needed via Zoom.

Submitted by: Approved by:

Tinneke Van Camp Raymond Hall

Vice Chair Chair

Academic Senate Academic Senate