

MEMORANDUM

TO: Diversity, Equity and Inclusion Committee
Shirley Jefferson, Chair
David Durfee
Bill Lippert
Karen Luneau
Jim Masland
Mary Moran
Perry Ragouzis

FROM: Kathryn Santiago, Associate General Counsel *K. Santiago*

DATE: January 12, 2023

SUBJECT: DEI Committee Meeting January 18, 2023

The Diversity, Equity and Inclusion Committee of the Board of Trustees is scheduled to meet on Wednesday, January 18th from 10:00 a.m. pm to 11:30 a.m. by Zoom.

The focus for this meeting will be an Educational Presentation on the intersection of Freedom of Speech, Academic Freedom, and Diversity, Equity and Inclusion principles by President Rodney Smolla, President of Vermont Law and Graduate School. A question-and-answer session will immediately follow the presentation.

In way of background, President Smolla is an accomplished litigator and scholar, renowned for his work in constitutional law, civil rights, freedom of speech, and mass media law, particularly matters relating to libel and privacy. A first-generation college student, President Smolla received his JD from Duke University School of Law and his BA, cum laude, from Yale University.

For some recent examples of how these issues are playing out in higher education and the reputational harm they can cause, see:

[Debates on whether academic freedom includes images offensive to Muslims \(insidehighered.com\)](#)

[Harvard cancels planned fellowship for human rights leader \(insidehighered.com\)](#)

[Channeling Orwell, Judge Blasts Florida's 'Dystopian' Ban on 'Woke' Instruction \(chronicle.com\)](#)

In preparation for the committee's discussion, in the accompanying materials please find the DEI Committee meeting minutes of October 27, 2022 and the AGB Freedom of Speech FAQ's (as an additional resource).

I can be reached directly at (802) 224-3012 if you have any questions. Thank you.

Cc: VSCS Board of Trustees
Council of Presidents
Academic Deans
HR Council
Student Affairs Council

**Vermont State Colleges Board of Trustees
Diversity, Equity, and Inclusion (DEI) Committee Meeting**

**Zoom Meeting/YouTube Stream
and
Conference Room 240 at the Office of the Chancellor, located at 575 Stone
Cutters Way in Montpelier, VT***

Wednesday, January 18, 2023 at 10:00 a.m.

AGENDA

1. Call to Order
2. Public Comment – sign up here: www.vsc.edu/signup
3. Approval of Meeting Minutes
 - a. October 27, 2022 DEI Committee Meeting
4. Educational Presentation on the intersection of Freedom of Speech, Academic Freedom, and Diversity, Equity and Inclusion principles by President Rodney Smolla, the President of Vermont Law School
5. Additional Business
6. Adjourn

*This meeting will be held via Zoom and, with the expiration of Act 78, members of the public may physically attend and participate in the meeting, via Zoom, in Conference Room 240 at the Office of the Chancellor, located at 575 Stone Cutters Way in Montpelier, VT

ITEM 1:
October 27, 2022 Minutes

Minutes of the VSCS Board of Trustees Diversity, Equity and Inclusion Committee meeting held Thursday, October 27, 2022 at 2:45 p.m. via Zoom - UNAPPROVED

Note: These are unapproved minutes, subject to amendment and/or approval at the subsequent meeting.

The VSCS Board of Trustees Diversity, Equity and Inclusion Committee met on Thursday, October 27, 2022 via Zoom.

Committee Members present: Shirley Jefferson (Chair), David Durfee, Bill Lippert, Karen Luneau, Mary Moran, Perry Ragouzis

Absent: Jim Masland

Other Trustees Present: Lynn Dickinson

Presidents: Joyce Judy

Chancellor's Office Staff: Donny Bazluke, Network/Security Analyst
Jen Porrier, Administrative Director
Sarah Potter, Chief Human Resources Officer
Kathryn Santiago, Associate General Counsel
Patty Turley, General Counsel
Meg Walz, Director, Project Management
Sophie Zdatny, Chancellor
Yasmine Ziesler, Chief Academic Officer

From the Colleges: Jae Basiliere, Chief Diversity Officer, Vermont State University
Mary Brodsky, Dean of People and Culture, Community College of Vermont
Kathleen Mason, Coordinator for Diversity, Equity & Inclusion, Vermont Technical College

1. Call to Order

Chair Jefferson called the meeting to order at 2:55 p.m.

2. Public Comment

There was no public comment.

3. Approval of August 3, 2022 Meeting Minutes

Trustee Ragouzis moved and Trustee Lippert seconded the motion to approve the minutes from the August 3, 2022 meeting The motion was approved unanimously.

4. Update on DEI at Vermont State University

Dr. Jae Basiliere, Chief Diversity Officer for Vermont State University, provided an update on the DEI work at VTSU. Dr. Basiliere shared four main areas where DEI is a focus.

- Transformation: Work continues on integrating diversity, equity, inclusion, and social justice into the VTSU transformation process. On October 8th, Dr. Basiliere presented a design for the Office of Diversity, Equity, Inclusion, and Social Justice to the VTSU cabinet and transformation sponsors. The proposal was well-received.
- Listening Sessions: Dr. Basiliere just completed a listening session tour where they presented their vision for the Office of DEISJ, collected feedback about priorities, and listened to community concerns. The information collected at these listening sessions will inform future project prioritization.
- Curriculum Integration: Dr. Basiliere and Kathleen Mason have been collaborating to build cultural competencies and integrate DEI into the Nursing Program curriculum at VTC, as well as in the Electrical and Plumbing Apprenticeship program. They hope to have the capacity to scale this up and offer support to other programs in the future. Faculty are currently reviewing the General Education curriculum and incorporation of DEI outcomes. This will be phased in to ensure that faculty are well-supported
- BARWE: The Vermont State University chapter of [Building Antiracist White Educators](#) (BARWE) has been extremely successful thus far. There is a mailing list of 120 VSCS faculty and staff, and our first two meetings each had over 45 people in attendance.

5. Update on DEI at Community College of Vermont

Mary Brodsky, Dean of People and Culture at Community College of Vermont, provided an update on DEI activities at CCV. Dean Brodsky shared that CCV and VTSU came together to create a joint BIPOC Student Affinity space drop-in session. While the turnout wasn't high, there was representation from all campuses and significant interest in holding more gatherings. Secondly, CCV had its first in-person professional development since fall of 2019. The day included introspective and thought-provoking activities to help guide discussion on how to incorporate and apply DEI principles into everyday work. Finally, the National Association of Diversity Officers in Higher Education is forming a chapter in New England and Dean Brodsky has joined and looks forward to the relationships that can be formed in the future.

6. Informational Presentation on the language of social justice at VTSU

Dr. Basiliere began by quoting from the Association of Governing Boards (AGB) Board of Directors' Statement on Diversity Equity and Inclusion. Dr. Basiliere explained that they are using this language to help contextualize the language of social justice at Vermont State University. This statement, along with other resources related to diversity, equity, inclusion, and

social justice, are available to all Vermont State Colleges' trustees through the membership with AGB.

7. Other Business

Chair Jefferson shared information about a case currently before the United States Supreme Court concerning whether race conscious admission programs at Harvard and University of North Carolina are lawful. This case is raising doubt about the future of race conscious admissions in higher education. Chancellor Zdatny shared that the Supreme Court's decision is unlikely to have an immediate impact upon the Vermont State Colleges as its institutions are non-selective, with an open admissions systems.

Chair Jefferson adjourned the meeting at 3:58 p.m.

ITEM 2:
AGB Freedom of Speech FAQs

Reconciling the two principles of free speech and inclusion is a challenge that board members and administrators must meet. This FAQ, largely derived from *Freedom of Speech and Diversity, Equity, and Inclusion on Campus: Considerations for Board Members and Chief Executives*, is designed to help AGB members meet this challenge by addressing the following topics:

- **What is free speech?**
- **Why is diversity, equity, and inclusion also of the utmost importance to higher education?**
- **How problematic are social media?**
- **How do students feel about free speech and protection from hate speech?**
- **How do boards maintain their balancing act regarding free speech and diversity, equity, and inclusion?**
- **What are some questions board members and chief executives should consider when discussing free speech and diversity, equity, and inclusion?**
- **Related Resources**

What is free speech?

Free speech is a fundamental and cherished value in American higher education. It is constitutionally protected at public institutions and, by practice or according to state statute, embraced at private colleges and universities as well.

Public colleges and universities must protect freedom of speech, which is not only a bedrock legal requirement under the First Amendment to the U.S. Constitution but also a cornerstone of academic freedom. On principle and from conviction—and in some states by statute—almost all private, nonprofit colleges and universities embrace protection of free speech as a central part of their values and culture as well.

Source: *Freedom of Speech and Diversity, Equity, and Inclusion on Campus: Considerations for Board Members and Chief Executives*, AGB 2022

Why is diversity, equity, and inclusion also of the utmost importance to higher education?

Another value of great importance is the advancement of diversity, equity, and inclusion across the higher education sector, where some institutions once openly discriminated against minorities and where many people of color are still seriously underrepresented among students, faculty members, and administrators. In the midst of a national reckoning over the lingering impact of systemic racism triggered by police killings of Black Americans, and at a time of acute political division and acrimony, governing boards and institutional leaders feel the weight of responsibility for helping to create a fairer and more just society.

But tensions have arisen between the right to speak freely in classrooms and across campuses and the imperative to make institutions more diverse and inclusive. Affirmative action in admissions once again is under challenge in the highest court in the land. At the same time some conservative students, professors, and outside activists contend that their right to express their views is censored or circumscribed by a liberal majority of faculty on many campuses.

Boards can set an example by discussing challenging topics in open meetings and inviting public participation, even when buffeted by critics who may resort to abusive language and half-truths. Trustees should not retreat behind closed doors but instead present facts, counter misinformation, and model civil discourse. They must recognize that if colleges and universities do not take on the responsibility of civic leadership and teach students how to disagree civilly, what other institution in society can or will? At the same time, to protect free speech and to avoid undermining progress on diversity and inclusion, boards need the courage to withstand political pressures that threaten academic freedom, including restrictions on what can be taught in classrooms.

Source: *Freedom of Speech and Diversity, Equity, and Inclusion on Campus: Considerations for Board Members and Chief Executives*, AGB 2022

How problematic are social media?

Social media cloud and complicate almost every discussion about free expression and efforts to advance justice, diversity, equity, and inclusion. Social media provide fertile ground for hate speech, often anonymous. College communities are no haven from uncivil discourse in so-called “flame wars.” Logic and respect fly out the window as ideological opposites pummel one another with words. These types of incidents have become increasingly common and can be major distractions and disruptions for campus leaders, who must address concerns from many different constituencies—some distant from the campus, including alumni, parents, and politicians.

What worries protectors of free speech most is that the current generation of students, regardless of which side of a contentious political or social issues they are on, may not value the principles of free speech as much as previous generations did. Boards must understand that unfiltered, unbridled social media have further eroded respect for social discourse in the past few years. The tone and messaging of such social media have made respect for civil discourse seem like an antiquated ideal and no match for the shouting, name-calling, and obloquy in today’s overheated political climate. They must ensure that their institution’s freedom of speech and campus climate policies and statements of values are in harmony with each other. They should also weave updated ideas and values regarding diversity, equity, and inclusion into each.

Source: *Freedom of Speech and Diversity, Equity, and Inclusion on Campus: Considerations for Board Members and Chief Executives*, AGB 2022

How do students feel about free speech and protection from hate speech?

Research conducted by the Knight Foundation and published in 2020 suggests that while students in theory esteem the First Amendment, in practice they “increasingly favor restrictions on speech—particularly speech that targets minority groups.” Some students seem to want protection from speech more than the right to freely express their beliefs.

The Knight Foundation drew this conclusion:

“The challenge of achieving a balanced policy on free expression has become more complicated as technology has led to much campus expression shifting online, a place that students increasingly feel stifles expression rather than promotes it. As such, colleges that want to ensure that all students have the opportunity to say what they think in a respectful environment need to take into account the virtual campus environment as well as the physical one.”

Additionally, a follow-up Knight survey carried out by the polling firm Ipsos found a sharp and growing divide between the students who identify as Republicans and those who say they are Democrats. Fifty-two percent of the Republican students questioned in 2019 felt freedom of speech rights were secure or very secure; in 2021, only 27 percent did. Sixty-three percent of the students supporting Democrats considered them secure or very secure in 2019, while 61 percent in 2021 did. Over five years the trend is alarming: almost three quarters of all students in 2016 said they felt free speech rights were secure, while fewer than half felt that way in 2021.

Sources: *Freedom of Speech and Diversity, Equity, and Inclusion on Campus: Considerations for Board Members and Chief Executives*, AGB 2022

The First Amendment on Campus 2020 Report: College Students’ Views of Free Expression, Knight Foundation and Gallup, Inc. 2020

How do boards maintain their balancing act regarding free speech and diversity, equity, and inclusion?

A number of recent controversies related to free speech and diversity, equity, and inclusion have directly involved boards and their members. Notably, in the case of public colleges and universities, trustees are usually appointed by governors or legislators; some are elected directly by voters. While every trustee has a fiduciary responsibility to act in the best interests of their institution, some have been criticized as too beholden to their political patrons' wishes and insufficiently supportive of their institution's commitment to open inquiry and academic freedom.

An institution's reputation must always be held paramount. All members of a college or university share in the responsibility for creating and maintaining a climate of mutual respect: none more so than its leadership. That includes trustees, who should observe and model rules of civil engagement in the conduct of their own businesses, especially when there are strong differences of opinion. When they don't, the inevitable publicity harms not only their own reputation but also the institution.

For boards, diversity, equity, and inclusion efforts can be a bone of internal contention. Trustees need to understand how and why those efforts were undertaken, how they are put into practice, and what results they are yielding. They should also support leaders in carrying out those programs or push for changes and then be prepared to defend them against critics—whether from within the college or university or from outsiders, including the governors and legislators who appointed them.

Campus disputes over free speech and social/racial justice issues almost always erupt under high-stress conditions, not placid ones. Senior administrators and trustees should expect to be pilloried as partly or largely responsible for whatever the institution is said to be doing wrong, whether not barring a controversial speaker or not doing enough to promote social justice and accede to student demands for safe spaces. It's a difficult balancing act that is easier to pull off if, in advance of a crisis, boards have grappled with the tension between freedom of expression and institutional support for racial and social justice and arrived at a consensus in full accord with their institution's mission and values.

Source: *Freedom of Speech and Diversity, Equity, and Inclusion on Campus: Considerations for Board Members and Chief Executives*, AGB 2022

What are some questions board members and chief executives should consider when discussing free speech and diversity, equity, and inclusion?

- Has the institution adopted a current statement of principles that addresses freedom of speech and diversity, equity, and inclusion?
- When does the board review the institution's or system's policies on freedom of speech? Are those policies reviewed as part of the orientation of new board members?
- Does the governing board have a policy that delegates responsibility for implementing institutional policies related to freedom of speech to the president of the institution or system? Is there a clear decision-making process in place related to issues of freedom of speech?
- Does the governing board clearly understand the relationships among: 1) freedom of speech, 2) academic freedom, and 3) justice, equity, and inclusion?
- How often, if at all, does the institution's president, general counsel, or other senior staff member inform the board about specific incidents and events related to campus freedom of speech?
- How often does the board discuss the various risks associated with campus free speech policies?
- Does the board not only consider financial, reputational, and security risks, but also those related to the retention of students, faculty, and staff, especially if they feel the institution has fallen down on its commitment to fostering diversity, equity, and inclusion?

[Answer continues on next page...](#)

- Does the institution have student, staff, and faculty guidelines for campus protests that clearly define what constitutes a violation and what disciplinary measures would be taken? Are campus security measures in place to address student protests or controversial speakers? And does the institution have policies regarding the use of campus facilities by outside groups?
- Do board members know what the internal adjudication processes are for students, staff, or faculty who violate institutional rules protecting free speech? Can they speak with knowledge about those processes if asked for comment by the press?
- How has the board engaged with students about issues related to freedom of speech and other campus climate matters? Is there a structured process for board engagement with students?
- Has the board considered how it would handle a hypothetical lawsuit filed against the trustees in federal court accusing them of First Amendment violations?

Source: *Freedom of Speech and Diversity, Equity, and Inclusion on Campus: Considerations for Board Members and Chief Executives*, AGB 2022

Related Resources

[Freedom of Speech and Diversity, Equity, and Inclusion on Campus: Considerations for Board Members and Chief Executives](#)

AGB

This guide outlines the careful considerations and illustrative cases that help board members and campus leaders better understand the flash points surrounding freedom of speech, academic freedom, and the tensions between these free expression rights and diversity, equity, and inclusion in the present campus environment. It offers governing boards practical guidance on how to anticipate and respond to frictions between these two fundamental facets of a higher education institution's mission. Board members and presidents will find a comprehensive set of questions to ask when navigating these challenges and crafting policies at institutions, systems, and foundations.

2022 • 28 pages

[Academic Freedom and Free Speech for Public College and University Faculty](#)

Scott Cole

Academic freedom and free speech protection for faculty at public higher education institutions can be slightly more tenuous than they are for their counterparts at private institutions. Nevertheless, policies governing free speech and academic freedom may be prudent for any higher education institution—public or private.

Trusteeship magazine, November/December 2021

[What You Don't Know Can Hurt Your Institution: Diversity, Equity, and Inclusion in Philanthropic Giving](#)

Kathy Johnson Bowles

Does your institution know the history, purpose, and intent of the philanthropic gifts held? What you don't know could hurt your institution. This article explores how assets of discriminatory and questionable moral standing like the ones at UC Berkeley are held by institutions and go unchecked, and how institutions can proactively and continuously take measures to support the tenets of diversity, equity, and inclusion in philanthropic giving.

Trusteeship magazine, November/December 2021

[When the Middle Ground Is the High Ground: Free Speech and the University](#)

Teresa A. Sullivan

Today, free expression is protected by the First Amendment at our public universities and upheld by the commitment to academic freedom at our private universities. Free speech is our lingua franca in academia, and any restriction on it seems incompatible with the fundamental values of higher education. Yet principles such as following truth, tolerating error, and fighting error with reason are questioned, and even threatened, on college campuses.

Trusteeship magazine, July/August 2017

[AGB Board of Directors' Statement on Justice, Equity, and Inclusion and Guidance for Implementation](#)

AGB

The AGB Board of Directors recognizes the urgency for governing boards to examine and address barriers to justice, equity, and inclusion (JEI) in their own work, at all levels of the institution, and beyond the borders of the campus. Undertaking this work will be challenging and complex and the AGB Board of Directors' Statement on Justice, Equity and Inclusion serves as a critical resource for boards in their efforts to implement this important governance work.

2021 • 48 pages

[Justice, Diversity, Equity, and Inclusion Toolkit](#)

AGB

AGB believes that addressing matters of social and racial justice is a national imperative. To support your board and institution in addressing these issues, AGB has developed this Justice, Diversity, Equity, and Inclusion (JDE&I) Toolkit. It includes materials you can customize to work with your board to develop a common understanding of JDE&I issues, assess institutional needs, and prioritize and pursue your goals.

2021