Present: Anderson (Mike), Anderson (Miranda), Arowojolu, Barbour (Twin Falls), Brandt (w/o vote), Brown, Cannon (Boise), Caplan, De Angelis, Foster, Grieb, Hrdlicka, Jeffrey, Johnson, Kern (Coeur d’Alene), Leonor, Morrison, Black Crow a.k.a. Morgan, Panttaja, Seamon, Tibbals, Vella, Watson, Wienczek (w/o vote). Absent: Baird, Bugingo, Ellison, Mahoney, Nicotra, Zhao (Idaho Falls). Guests: 9

Call to Order and Minutes: The chair called the meeting to order at 3:30. A motion (Panttaja/Tibbals) to approve the minutes passed with two abstentions.

Chair’s Report:

- Faculty Senate nominations for the University-level Promotion Committee are due to Mary Stout (mstout@uidaho.edu). Details regarding the nomination process and the nomination form are available in the documents supporting Senate meeting #9 on October 17, 2017. The deadline was October 27. Missing nominations must be submitted as soon as possible.
- Annual benefits enrollment runs through November 7. The last informational sessions will be held on November 2. Information is available on the 2018 Annual Enrollment Website.
- President Staben will give the State of the University address on November 10 at 2-3:30 pm, International Ballroom, Pitman Center.
- The Veteran’s Appreciation Dinner will be held on November 11 at 5:30 in the International Ballroom at the Pitman Center.
- The University Faculty Meeting #2 will be on November 29 from 3-4:30 in the Vandal Ballroom at the Pitman Center.
- Faculty Senate Leadership has nominated several faculty, including Senator Joseph De Angelis, to serve on the VandalStar Implementation Team. A VandalStar resource page is now available.

Provost’s Report:

- Last week’s meetings with all of the College Advisory Boards was successful. The Provost congratulated Dan Bukvich and the UI Jazz Choir as well as the Vandal Marching Band for their outstanding performances at the University Gala. He also mentioned that ASUI President McKenzie MacDonald did a great job moderating the event with Vice President Mary Kay McFadden.
- StarFish, the company behind VandalStar, visited campus this past week. They will be back several times during the upcoming months to consult and help guide implementation of the software at UI. They also will be providing training. They provided a report during this last visit. The Provost will make a copy available to post on the Faculty Senate Website.
- The Provost met today with the Faculty Compensation Taskforce to get the committee’s guidance on unresolved issues relating to faculty who are not on the tenure track. The national databases on which the university is relying, are not as robust for these faculty members. In addition, the definitions for non-tenure-track faculty differ significantly from institution to institution and within UI from department to department.

A senator asked if there was a timeline for informing all faculty of their market compensation rates and targets, and whether there will be a webpage similar to the one available for the staff. The provost responded that due to time pressures, a webpage would not be available for faculty in time for the mid-year compensation decision. However, deans and unit administrators will have comprehensive information which they can share with individual faculty. He explained that the data collection and decision process has just been completed for faculty. The webpage will require additional programming to implement that will not be completed before early spring semester. Faculty should know their market
compensation information before the end of the fall semester. He pointed out that the university is sufficiently far from market that we can make improvements now, yet still have time to continue to work and make adjustments this spring.

**Recording Class Sessions.** Heather Chermak reported that recording images of students’ faces raises potential Family Educational Rights and Privacy Act (FERPA) issues. The issues arise when recordings of class sessions including images of students are made for future viewing. There is no issue when recordings are made for viewing by the students in the class itself. If a recording is for use in future semesters, Chermak recommended that only the instructor and course materials be included in the recording and that images of students not be included. If student images are included in the recording, each student must knowingly and voluntarily sign a waiver or release.

A senator asked whether using student names in a recorded class raises FERPA issues. Chermak deferred to General Counsel Kent Nelson who was a guest at the meeting. Nelson responded that the answer could depend on the situation. The question is whether the recording creates a personally identifiable record regarding the student. If the student has a common name, then use of the name would not necessarily create such a personally identifiable record. Another senator commented that showing only a “talking head” does not produce an engaging recording. He asked whether consent of students could be presumed from the fact that they knowingly registered for a course that would be recorded. Nelson responded that enrollment is not enough to presume consent. FERPA requires a knowing, voluntary, written release. He recommended that the best practice would be to get a release from every student whose image would be broadcast in such a situation. Nelson added that it might be possible to require student consent to recording in an elective class. But, Nelson believes that such a requirement would not comply with FERPA in a required class. This is a question Nelson will look into.

A senator asked whether there is easy access to a consent form? Chermak responded that there is a consent form on the Registrar’s FERPA webpage. Another senator asked whether FERPA could be violated if someone recognized a student’s voice on a recording? Chermak responded that recognition of a voice is a lesser concern. Another senator asked where these videos should be stored. Chermak stated that Information Technology Services (ITS) is working on guidance on storage. The Registrar’s Office will follow up with ITS and make the guidance available on its FERPA webpage. Several senators suggested methods by which the release might be handled, including placing a release of liability waiver form where applicable or including a column in the BBLearn grade center where students may check a box to give a release. Nelson stated that he would like to review each of these suggestions to determine whether they comply with FERPA.

Another senator asked whether a photo release is required to use the pictures of students who have won or competed in an external event or competition on a webpage or in a newsletter. Nelson stated that he recommends that involved students complete a release. He stressed that the privacy students are entitled to under FERPA privacy are from what the university discloses about them. Once the university creates the record, FERPA applies even if the photo was taken in a public venue. He also stated that FERPA distinguishes between students as students and students in other capacities such as employees. Nelson concluded that the discussion showed there is a need for clarification on this issue and stated that he would develop further guidance for faculty.

**FS-18-010 – FSH 3320 – Annual Performance Evaluation Form and FS-18-011 – FSH 3320 – Annual Performance Evaluation Policy.** Professor Marty Ytreberg and General Counsel Kent Nelson presented revisions to the policy and form for faculty annual performance evaluations. These revisions were previously presented to Senate for discussion at [Meeting #10 2017-18](#). They are being presented at meeting #11 for a vote.
Ytreberg stated that the Faculty Affairs Committee (FAC) made two substantive revisions in response to the prior discussion. First, the committee adopted the suggestion of a senator that a note be included reminding faculty that the annual performance evaluations are separate from, but considered as one set of information in, the promotion and tenure process.

Second, Ytreberg pointed out that the committee had eliminated the second faculty signature line on page 2 of the evaluation form. This second signature was required after the dean’s review, to establish that the review was shared with the faculty member. The committee removed this signature to avoid the implication that a faculty member agrees with the changes made by the dean in the unit administrator’s evaluation. Instead, the committee clarified the policy to ensure that the dean’s review is given to the faculty member and an opportunity provided for the faculty member to respond to the dean’s review.

Nelson called senators’ attention to two changes he suggested in the policy. He asked to add new sections B-6 and B-7 section. New Section B-6 underscores that the annual performance evaluation is a separate process from, and is only one component of, the tenure and promotion process. New section B-7 ensures that in combining the tenure and non-tenure evaluation process, we did not inadvertently create an expectation of contract renewal. Non-tenured employees are at will with respect to the renewal of contract. Once a contract is in place, they have an expectation of continuation for the period of the contract. He also noted that there is no expectation of renewal under Regents policy.

A senator suggested that new B-6 be revised to add a specific reference to FSH 3900 B-2 regarding non-tenured faculty contracts. He also suggested eliminating the middle sentence of the new provision. After discussion and agreement to not strike the second sentence but add reference to FSH 3320, FAC Chair Ytreberg accepted the following amendment as consistent with the committee’s intentions:

B-6. Non-Tenured Faculty. Pursuant to Regent’s policy, non-tenured faculty do not have an expectation of contract renewal beyond that stated in FSH 3900 B-2, absent a specific written multi-year contract. The process set forth in FSH 3320 B does not require the University to renew a non-tenured faculty contract. The process set forth in Section FSH 3320 B shall not be required for a non-tenured faculty member who has been given notice of non-renewal.

After this introduction, the chair asked whether there were further comments regarding the annual evaluation form. Seeing no desire for further discussion of the form, the chair proceeded to discussion of the policy changes.

A senator, referring to new section 3320 A-1.i, asked who would be responsible for notifying the provost when the faculty member, unit administrator, and dean do not agree on the evaluation. Chair Ytreberg responded that the dean is responsible for forwarding the evaluation to the Provost Office and should inform the provost at that time.

A senator pointed out that the language of new section 3320 A-1.b.1 regarding performance that meets or exceeds expectations addressed only satisfactory performance. After discussion, FAC Chair Ytreberg agreed that the following amendment was consistent with the intent of the committee:

i. Performance that Meets or Exceeds Expectations is at least the satisfactory performance during the review period of a faculty member relative to the position description.

A senator, referring to new section A-1.c, asked why the policy strongly recommends that the unit administrator meet with each faculty member rather than requiring such a meeting. Ytreberg pointed out that the unit administrator is required to offer to meet. The committee added additional language to suggest the importance of the meeting. However, the committee did not believe that forcing the faculty
member to meet with the unit administrator was wise. The Provost commented that additional conflict can emerge when the meeting is not held. The chance to resolve issues at the unit level is lost. The faculty member sometimes has the incentive to seek another venue such as the Faculty Appeals Hearing Board, to resolve issues. Ytreberg responded that the Faculty Affairs Committee is interested in faculty “happiness” (for lack of a better term). If the policy forces the faculty member to participate in a confrontational meeting with their unit administrator, nothing is to be gained. A senator asked whether there is a process for what happens if the faculty member does not meet with the unit administrator. Ytreberg responded that the policy does not have specific provisions for this. The unit administrator must offer to meet. There is nothing in policy that says what would happen as a result.

A senator asked, referring to new section B-3.a, to whom the mentoring committee reports? Ytreberg stated that the committee is appointed for the faculty member and does not report to the administrator. Either the faculty member or the administrator can request the appointment of a mentoring committee. The provision is intended to be flexible.

A senator asked for clarification of what happens when the faculty member receives an evaluation of below expectations multiple times. Ytreberg explained that the first time a faculty member may meet with the unit administrator to develop strategies to address the issue and a mentoring committee may be appointed. If a below expectations evaluation is received for the second time in three years, the meeting escalates to include the dean and to address whether the strategies were effective. Finally, if the below expectations evaluation is received the third time in five years, a formal review committee is appointed. Ytreberg also explained that at any time the provost can trigger a review after consultation with the dean and unit administrator, if a faculty member receives an overall evaluation of does not meet expectations that is so low their performance is deemed unacceptable.

General Counsel Nelson commented that he has always presumed that a supervisor has the right to call in an employee to discuss performance and that if the employee refused to talk to the supervisor, the employee’s refusal would be regarded as insubordination. He expressed concern that our policy is sending an inconsistent message from an employment law perspective. A senator asked whether an employee could refuse to meet with their supervisor, if the supervisor was abusive. Nelson agreed that there would be some legitimate reasons for an employee to refuse to meet with a supervisor. However, the employee could take these concerns to appropriate resources in the institution such as the Office of Civil Rights. Ytreberg pointed out that sometimes the failure to meet expectations would be in a small area of the faculty member’s overall responsibilities. If so, a meeting might not be required. He also pointed out that this was not a change from current policy.

Chair Hrdlicka asked General Counsel Nelson whether his concerns were such that the policy might be vetoed. The faculty secretary suggested language that could be moved by a member of the body if senators are inclined to amend the provision. A senator spoke against forcing a meeting, arguing that there are many circumstances a meeting would not be necessary and the requirement would be administratively cumbersome. He also pointed out that most faculty feel responsible to assist a poorly performing colleague. Forcing these meetings could lead to difficult, unforeseen consequences with no institutional gain. Another senator pointed out that if a person refuses to meet there already is conflict and controversy. A meeting could make things much worse. Ytreberg reminded the body that FAC is not proposing a change to existing policy regarding whether a meeting is required between the faculty member and unit administrator. He suggested that if the administration comes to FAC with a proposal to make such a change, FAC could consider it at that time. Provost Wiencek reiterated his earlier point that in his experience, not all of these situations are charged with controversy. There are cases where the faculty member simply doesn’t like what they are hearing from the unit administrator and they want to have their situation addressed in a different venue. He does not think the approach in the proposed policy
is a major flaw and indicated that there may be reasons to stay the course. General Counsel tended to agree with the provost.

Finally, Ytreberg raised the question of whether new section B-7, requested by general counsel, should be moved to A-2. After discussion it was agreed that this move was consistent with the committee intentions.

The seconded motions from Faculty Affairs were approved as follows:
- FS-18-010 - annual performance evaluation form, eighteen agreed, one opposed and two abstentions, and
- FS-18-011 – annual performance evaluation thirteen agreed, one opposed and seven abstentions.

After a brief discussion it was determined that there was insufficient time left to address the Great Colleges to Work For Survey. That matter will be rescheduled for another meeting.

The business of the meeting having been completed, a motion to adjourn (Watson/Panttaja) was made and the meeting was adjourned at 4:51.

Respectfully Submitted,

Liz Brandt, Faculty Secretary & Secretary to the Faculty Senate