



# University of Colorado **Denver**

TO: Faculty Assembly  
FROM: Wendy Bolyard  
DATE: November 1, 2024  
RE: Inclusive Scholarship and Pedagogy in Faculty Activity Reports and Merit Reviews – draft resource guide

Originally presented to Faculty Assembly (FA) more than a year ago, this work is shared today in final ‘draft’ form. The draft designation acknowledges that this document, which addresses issues of great magnitude, requires ongoing discussion, further vetting, and support from university administration.

The committee asked to advance this work received remuneration in summer 2023. Special thanks to Dr. Jamie Hodgkins, associate professor of anthropology, for their unpaid labor shepherding this project from start to finish.

Feedback was received from Faculty Assembly’s EDC and EPPC and comments were offered by FA members at a monthly meeting. These were incorporated within. Furthermore, a memo from Chris Puckett, managing associate university counsel, was added and included in the FAQ section of the resource guide.

It was the recommendation of the summer 2023 committee that this work be advanced only with a supporting letter from the chancellor and/or provost. A timeline of activities was proposed on page iii, and includes a full vote of Faculty Assembly. These steps are left to the discretion of and execution by FA leadership.

Ultimately, the incorporation of DEI in annual review is decided at the primary unit level, as are the annual evaluation criteria. Unaddressed questions and concerns may be deliberated by schools, colleges, and library, and their respective units.



# University of Colorado **Denver**

TO: Faculty Assembly Executive Committee

FROM: Kemi Ajayi, Wendy Bolyard, Linda Fried, Jamie Hodgkins, Lisa Johansen, and Marjorie Levine-Clark

DATE: September 7, 2023

RE: Resolution Regarding Inclusive Scholarship and Pedagogy in Faculty Activity Reports and Merit Reviews

This summer, the members of the committee noted above worked to create the following document which includes a guide of resources and best practices to support units in their consideration and implementation of inclusive scholarship in faculty activity reporting and merit reviews. Per the Resolution, this guide was to be made available by fall 2023 and we are pleased to present this work to you.

Allow us to provide some context for the following materials and our suggestions for implementation. To begin, we suggest the Executive Committee review the work produced and revise accordingly. Next, there are several Faculty Assembly (FA) committees we suggest evaluate this guide including: APC, CSW, DisC, EPPC, EDC, and LGBTQ+. Upon receiving and incorporating feedback from these committees, the guide should be voted on by the full Faculty Assembly.

As this is being shared through FA committees, the Executive Council should work with the Chancellor, Provost, and Managing University Counsel to affirm the timeline for implementation and to generate a guidance document from the Provost regarding unit expectations, as well as a letter from the Chancellor providing assurances of protection should faculty choose to report their DEI activities through the annual review process. In addition to this we would like a commitment from the Chancellor to work with the president of the CU System, the Regents, and the legislature to assure protections for those who engage in DEI work. Additional details are provided herein along with a timeline/flowchart of activities.

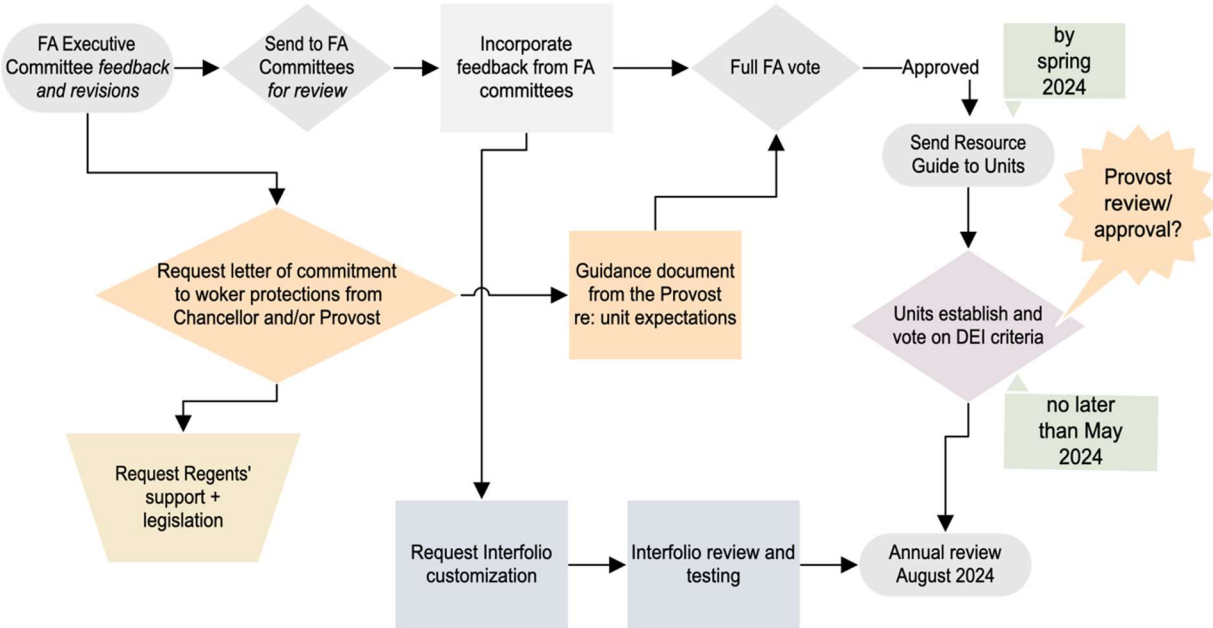
Furthermore, we suggest that Faculty Assembly seek approval to customize the Interfolio Faculty Activity Report. To reflect the importance of DEI work at CU Denver, technology enhancement that streamlines reporting of DEI work for faculty is expected. Details on the customization request are specified.

An important note. After many discussions, the committee recommends that DEI work and the reporting of any such work **not** be required. Making DEI activities mandatory would be premature, given the already overburdened faculty and the University's limited resources due to enrollment declines and the budget crisis. Persistent structural inequities and an unequal faculty hierarchy must be addressed prior to expecting all faculty to engage in DEI efforts. Until there is a culture of belonging for all, we need not increase burdens on faculty, especially those lacking job protections.

We appreciate the opportunity to engage in this work. We are available to discuss and answer any questions you may have. Thank you.

# INTERNAL FACULTY ASSEMBLY GUIDANCE

## TIMELINE OF ACTIVITIES



## SUPPORT FROM ADMINISTRATION

Prior to any request that faculty report their DEI-related activities, the committee strongly encourages the FA Executive Council to request a letter from the Chancellor and/or Provost that provides assurances of protection should faculty choose to report their DEI activities through the annual review process. After consultation with Managing University Counsel Chris Puckett, this letter may reference anti-retaliation and civil rights laws. Furthermore, the letter may also include background on the Colorado Lawful Off-Duty Activity Statute and whistleblower protections. Puckett assured the committee that should any faculty member be sued for anything related to what is part of their job, such as DEI activities, the university will defend them. The committee learned that any part of the faculty personnel file, which includes the Faculty Activity Report, is not subject to disclosure through a Colorado Open Records Act (CORA) request and will not be released.

Puckett mentioned that the Board of Regents is working on an initiative in response to the Supreme Court's recent affirmative action decision. The timeline for this work was not given. Regents' support of faculty in reporting DEI activities may be requested. Additionally, the Regents and CU System may be encouraged to endorse legislation that protects DEI activities by state employees. The committee noted that given current politics in other states it is possible that we are creating the very tool (DEI reported activities) that could be used against workers in the future. The last six years have demonstrated that politics change fast. It is important to recognize that all states, including Colorado, may be only one election away from the type of legislation seen elsewhere in the nation, such as Florida. As we watch the news unfold, having a clear understanding of worker protections for the information that we are asked to report is critically important.

## INTERFOLIO FACUTLY ACTIVITY REPORT (FAR) CHANGES

The committee met with Dave Deffenbacher, Institutional Research and Effectiveness, to discuss how the Faculty Activity Report (FAR) in Interfolio may accommodate efficient report of faculty DEI activities. As with any technology, no tool is perfect. Thus, we suggest that Faculty Assembly seek approval and funding to customize the FAR. An investment in technology enhancement that streamlines reporting of DEI work for faculty would demonstrate the university's commitment to this work. Details on the customization request are specified below.

This language was drafted by the committee and would be included in a banner on the Interfolio FAR.

**Proposed banner language:** CU Denver aims to put our diversity in action by becoming an equity-serving institution—one that provides a racially and culturally enhancing educational and work environment and a sense of belonging for all. We will sustain a culture of belonging for all and provide the necessary resources and supports to help everyone succeed.

We will accomplish this goal through engaging our entire community to share responsibility for creating and sustaining a just, safe, and inclusive campus; improving our systems to actively support minoritized people and historically marginalized identities in order to reduce bias and create and sustain equity; and redefining success through a lens of justice, equity, diversity, and inclusion to unlock the potential for everyone to succeed.

To meet these goals the FAR now includes a check box and a narrative space for activities related to Diversity, Equity, and Inclusion. While we encourage everyone to report work in these areas to the best of their ability, this category *cannot* be used for evaluation purposes until each member's primary unit criteria specify the expectations and rewards for diversity, equity, and inclusion in their unit.

To record DEI work, changes to the FAR are intended to allow recent work to be added and previously reported work to also be included in the report. Entered works could stand on their own without further explanation; for example, an article titled *Diversity, Equity, and Inclusion in the Urban Research University*, likely does not require any additional narrative. However, for other work, a text box allows for narrative to explain how the work fits the DEI mission. DEI work would then be compiled in its own section of the FAR or could be a stand-alone report on these specific efforts. Faculty Assembly, most likely APC, should decide the output for the DEI activities that supports fair and equitable assessment by unit merit/annual review committees.

## Requested Changes to the FAR

For ease, this committee requests the following changes be programmed into the FAR, but this work must be commissioned.

- Add category “Activities related to Diversity, Equity, and Inclusion”
  - *Create a way to populate the new category with data already entered*
- Scholarly and creative work (drop down of entered work)
  - Window: Please explain how this work relates to DEI
- Improved instruction/advising (drop down of entered work)
  - Window: Please explain how this work relates to DEI, and/or cut text or required readings from your syllabus that relate to DEI
- Courses taught (drop down of entered work)
  - Window: Please explain how this class relates to DEI, and/or cut text or required readings from your syllabus that relate to DEI
- Professional Development (drop down of entered work)
  - Window: Please explain how this professional development relates to DEI
- Leadership and Service (drop down of entered work)
  - Window: Please explain how this leadership/service relates to DEI

FOR EXAMPLE:

DEI Related Activities: Courses

Checkbox



	Term ^	Course ^	Course Title ^	Instruction Mode	Course Component	Credit Hours
<input type="checkbox"/> DEI	Summer 2023			Online	Lecture	3
<input type="checkbox"/> DEI	Summer 2023			Online	Lecture	3
<input type="checkbox"/> DEI	Spring 2023			Online	Lecture	3
<input type="checkbox"/> DEI	Spring 2023			Online	Lecture	3
<input type="checkbox"/> DEI	Fall 2022			Online	Lecture	3
<input type="checkbox"/> DEI	Fall 2022			Online	Lecture	3

**B**

DEI Related Activities: Courses

DEI NARRATIVE	SUMMER 2023: ABCD 1001
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INCLUSIVE SCHOLARSHIP  
AND PEDAGOGY  
IN FACULTY ACTIVITY REPORTS  
AND MERIT REVIEW

*RESOURCE GUIDE  
AND BEST PRACTICES*

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## RESOURCE GUIDE AND BEST PRACTICES: AN INTRODUCTION

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In response to faculty unexpectedly finding a question regarding diversity, equity, and inclusion (DEI) related activities on the Interfolio Faculty Activity Report (FAR) in the fall of 2022, Faculty Assembly passed the forgoing resolution, and a committee was selected to create this guide of resources and best practices. As an aspiring equity-serving institution, CU Denver must engage in an iterative process focused on how DEI work is evaluated and awarded. Through the collaboration on this resource, a number of related issues emerged. For example, the structure of higher education perpetuates a hierarchy where women are more likely to be in unprotected roles and expected to do more teaching and service. Historically marginalized groups are more often called to DEI work and mentoring. Faculty workloads, most advantageous to white cis males, perpetuate inequities. These conditions are known to leave some faculty feeling invisible and unrewarded thereby impacting productivity, satisfaction, and retention.<sup>1</sup>

The principles that inspired the development of this guide were informed by a series of reports from the American Council on Education (ACE). One report noted the importance of context. Thus, we believe it is important to acknowledge the structure in which we work. Although this guide focuses solely on annual evaluation and how faculty may report and be rewarded for their DEI endeavors, more work must be done. In addition to annual evaluation, the University should also review promotion and tenure policies, guidelines for external letters, the evaluation of teaching, and how to measure scholarly impact, practices known to negatively impact historically disadvantaged faculty. Until the structures that propagate inequities are acknowledged and changed, the best practices noted here may have little impact. However, we must start somewhere, and so we begin with the annual review and reward systems.

### WHY IS DEI WORK VALUABLE?

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We live in a diverse world. It is important to create a welcoming, accepting, supportive environment for all who come to work and learn. Fostering Diversity, Equity, and Inclusion (DEI) is a commitment to creativity, growth, health, understanding, and feelings of safety and acceptance. Everyone benefits from opening themselves to different people, perspectives, experiences, and orientations. Increased DEI activities lead to more personal satisfaction, and increased job retention rates, loyalty, productivity, and better mental health.

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<sup>1</sup> O'Meara, K., Culpepper, D., Misra, J. and Jaeger, A. (2021). *Equity-Minded Faculty Workloads, What We Can and Should Do Now*. American Council on Education.

## FACULTY ASSEMBLY RESOLUTION

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### Regarding Inclusive Scholarship and Pedagogy in Faculty Activity Reports and Merit Reviews

*Be it resolved, that Faculty Assembly encourages schools and colleges to be inclusive in their consideration of scholarship and faculty activity in merit evaluations, while declining to prescribe a uniform requirement for individual faculty;*

*Be it further resolved, that scholarship related to justice, equity, diversity, inclusion, and belonging is an additional, not mandatory, area for which faculty can receive recognition and reward in the faculty review process;*

*Be it further resolved, that each primary unit, in consultation with their school or college, shall determine the standards for crediting faculty work related to justice, equity, diversity, inclusion, and belonging appropriate to their respective disciplines;*

*Be it further resolved, that Faculty Assembly recognizes the value in narrative submissions of inclusive scholarship that reflect the unique, varied and specific contributions of faculty members in the areas of justice, equity, diversity, inclusion, and belonging;*

*Therefore, the Faculty Assembly, in collaboration with the Vice Chancellor of Diversity, Equity and Inclusion, shall create a guide of resources and best practices to support units in their consideration and implementation of inclusive scholarship in faculty activity reporting and merit reviews, to be made available by Fall 2023.*

## DEFINITIONS

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Central to DEI work is starting from a place of common understanding. What does it mean to be an equity-serving institution (ESI)? The University articulates its goal in the following ESI Statement:

We aim to put our diversity in action by becoming an equity-serving institution—one that provides a racially and culturally enhancing educational and work environment and a sense of belonging for all. We will sustain a culture of belonging for all and provide the necessary resources and supports to help everyone succeed.

We will accomplish this goal through engaging our entire community to share responsibility for creating and sustaining a just, safe, and inclusive campus; improving our systems to actively support minoritized people and historically marginalized identities to reduce bias and create and sustain equity; and redefining success through a lens of justice, equity, diversity, and inclusion to unlock the potential for everyone to succeed.

This statement contains many terms related to DEI that can be interpreted in a variety of ways. The University's Institutional Equity Advocacy Council (IEAC) created a [glossary of DEI definitions](#) for the CU Denver community to adopt in moving towards our strategic goal of becoming an equity-serving institution. It is a rich and educational list that we encourage you to work through. For ease of access, here we provide the definitions for Diversity, Equity, and Inclusion:

**Diversity** refers to the representation of faculty, staff, and students who hold individual differences (e.g., personality, learning styles, and life experiences) and group/social differences (e.g., race/ethnicity, class, gender, sexual orientation, country of origin, and ability as well as cultural, political, religious, or other affiliations) with special focus on historically minoritized identities (adapted from AAC&U).

**Equity** requires attention to disparate impact, differential access, and opportunities afforded to various communities, as well as structural and systemic barriers that limit potential and possibilities (Alina S. Wong and DeLuca Fernandez, 2018).

**Inclusion** refers to the active, intentional, and ongoing engagement with diversity—in decision making, sense-making, curriculum, the co-curriculum, and in communities (intellectual, social, cultural, geographical) with which individuals might connect—in ways that increase awareness, content knowledge, cognitive sophistication, and empathic understanding of the complex ways individuals interact within systems and institutions (adapted from AAC&U).

## IMPLEMENTATION

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Any shift in approach to evaluation needs to be undertaken with “care and deliberation to achieve shared understanding and effective implementation” (Oregon State, 2018). Departments should have open discussions about how the DEI examples provided below may apply to their specific disciplines and prepare policies in preparation for incorporating DEI into annual evaluations. “The implementation process requires pragmatic agreements, opportunities for ongoing education and awareness, and an increasing capacity of the faculty overall to engage these complex questions” (Oregon State, 2018).

Implementation will be hindered if the fundamental tension between diverse ideologies is not named. Adopting DEI into annual review is not without risk and more vulnerable positions will likely be dynamically impacted. A shared understanding of academic freedom is required as is embracing the reality that academic freedom, although present in policy, does not apply to practice for faculty without job protections.

To create a positive environment to implement changes, the following “equitable conditions” need to be present<sup>2</sup>:

### **Transparency**

To increase trust, accountability, and organizational commitment, transparency assures evaluation expectations and guidelines are intentionally shared, accessible, and accurate. The expectations and guidelines should be agreed upon through faculty governance processes.

### **Clarity**

Faculty must understand what is expected and how it will be rewarded. Ambiguity invites bias that is more likely to impact the most vulnerable.

### **Credit**

DEI work is important but often undervalued in annual review. Departments should recognize and reward faculty who expend effort in this area.

### **Norms**

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<sup>2</sup> O'Meara, K. and Templeton, L. (2022). *Equity-Minded Reform of Faculty Evaluation: A Call to Action*. American Council on Education.

Departments need to set norms regarding DEI in scholarship/creative activity, teaching, leadership and service so that there is equity guiding evaluations. Departments cannot assume that faculty members will know how to incorporate DEI into their workloads.

### **Context**

Departments should “acknowledge that different faculty members have different strengths, interest, and demands” that inform how they incorporate DEI into their professional work and should “recognize this context.”

### **Accountability**

Departments should have clear processes to ensure faculty members fulfill expectations regarding DEI and receive credit for their work.

### **Consistency**

The goal of updating the FAR is to provide central consistency in how DEI work is reported. Departments may determine DEI work thresholds, if desired, and how they are demonstrated, valued, and rewarded. Processes and standards must be applied consistently so that faculty know to expect fair treatment. Differences must be justified.

### **Flexibility**

At all levels of the university, DEI work must be seen, acknowledged, and valued. Departments should have the flexibility to give credit for DEI work that may be outside traditional measures of teaching, research, and service.

### **Agency and Representation**

Faculty must be empowered to make a case for reward. Policies that ensure faculty rights are paramount. Faculty should also be evaluated by colleagues who understand the context of their work reflected by appointment type, field, methods, etc.

## UNIT CRITERIA

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Shared governance requires that units decide on annual review criteria. First, units must create the positive environment as defined, then consider the following questions.

Through shared governance, primary units should answer the following:

- What DEI work could faculty incorporate in any/all areas (teaching, research and creative activities, service)?
- Does DEI work support the attainment of excellence in teaching, research and creative activities, and/or service?
- What evidence would be needed to document DEI efforts?
  - Narrative, documentation of dissemination, and/or evidence of impact?
  - How do faculty demonstrate their work has made an impact?
- How is routine service on a DEI-type committee valued?
  - Does DEI service require some level of uniqueness?
- Are DEI-related efforts incorporated in faculty teaching efforts each year such as decolonizing a syllabus, including a DEI statement in a syllabus, sharing a DEI philosophy rewarded?
- In which category do certain activities apply? For example, is mentoring/advising underrepresented students teaching or service?
- Are you units expecting more of already overburdened faculty or does DEI work simply expand the criteria for annual review?
  - Can differentiated workloads address fairness concerns?
- How are DEI efforts recognized and rewarded and how do units differentiate between these?
- How are systemic biases in FCQs addressed for faculty who incorporate DEI in their teaching?
- How does career stage or position influence the implementation and assessment of DEI work?
- What guidance is the unit providing to faculty on how DEI activities are measured or credited?
- “Who” qualifies as being served through DEI efforts (e.g., first-gen, LGBTQ+, veterans, etc.)?
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Other universities have noted their sensitivity to safeguarding academic freedom so that DEI work is rewarded but not mandated. Faculty may choose to contribute to DEI and include those efforts in their annual review process. Such efforts depend on a university-level commitment to

DEI where opportunities for engagement and training on DEI-related initiatives are available so that each faculty member need not establish their own unique DEI agenda.

As multiple ways to engage and learn about DEI work are provided, how these efforts are rewarded must be decided.

- Are DEI efforts compensated in some way via course release, funding (additional pay, funding for programs/ideas), smaller and/or preferred classes, and/or merit reward (ratings of excellence on annual review)?

As units discuss and define criteria and provide resources to support DEI work, it must be explicit that there is no penalty for not engaging in DEI efforts. There should be no requirement for DEI-related activities. Persistent structural inequities and an unequal faculty hierarchy must be addressed prior to expecting all faculty to engage in DEI efforts. Until there is a culture of belonging for all, burdens on faculty, especially those lacking job protections and those who are historically marginalized, need not be increased.



## BEST PRACTICES

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The committee reviewed resources from other institutions to compile a list of best practices as well as examples of DEI-related efforts in teaching, research and creative activities, and leadership and service.

Fulfilling the desire to be an equity-serving institution requires collaboration between the university, schools/colleges/library, and primary units. The following outlines best practices and expectations; however, where responsibility lies for decisions may not be clear. Regardless, the suggestions are paramount to creating a positive environment where DEI work will thrive.

- University/Primary Units: Provide specific examples of what DEI contributions look like in teaching, research and creative activities, and leadership and service (see below for general examples)
- University: Provide inclusive pedagogy training and resources, especially for IRC faculty who are responsible for the majority of student credit hour production. Given the importance of teaching, training should be compensated.
- Primary Units/Schools/Colleges/Library/University: Implement policy changes through shared governance processes with care. Provide full transparency with clear explanations and expectations.
- Primary Units/Schools/Colleges/Library/University: Provide transparent appeal and grievance policies for annual evaluation for all faculty.
- Primary Units/Schools/Colleges/Library/University: Recommend best practices for faculty in disciplines that do not as easily align with DEI-related content.
- Schools/Colleges/Library: Provide consistent, fair, and equitable differentiated workloads for individuals doing DEI work when this work goes beyond “normal” expectations.
- Primary Units: Create transparent policies/criteria that are available to everyone in the department.
- Primary Units: Be aware of implicit bias in evaluation and create policies for how to mitigate it.
- Primary Units: Be transparent about workloads within the department – identify who is doing what service, teaching, etc. This provides an opportunity to ensure equity at the unit level.
- Primary Units: Expand definitions of research and scholarly activities to recognize the current environment in the discipline.

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## EXAMPLES

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The following are sample activities faculty may report that are related to DEI. These examples are primarily derived from the University of Oregon. These lists are not all-encompassing. Rather, they are offered to help primary units in facilitating discussion on criteria specific to their disciplines. How these activities are reported and rewarded must be determined by primary units.

### TEACHING

- Included course material authored by people from historically underrepresented groups.
- Some class discussions or course work centered on issues related to diversity, equity, and inclusion.
- The course included guest speakers from historically underrepresented groups.
- The course included research on the benefits of diverse workplaces.
- The course discussed biases related to the course topic.
- The course was constructed to make it more accessible (e.g., multiple modes of learning: reading, hearing, and hands-on work included, etc.)
- Developing effective programs, curricula, teaching strategies and/or inclusive pedagogy for the educational advancement and participation of students from groups underrepresented in higher education.
- Developing courses or curricula materials that focus on themes of diversity, equity, and inclusion or the incorporation of underrepresented groups.
- Record of success teaching, mentoring, and/or advising students from broadly diverse demographic and social backgrounds, including students from groups that have been historically underrepresented in higher education.
- Approaches to mentoring students from minoritized or underrepresented groups that extended beyond the classroom setting. This could include individual/one-on-one or group efforts and could reflect activities within formal programs or informal activities. Value in serving as a role model, particularly those who see themselves as representing historically marginalized populations in academia.
- Participation in faculty training/workshops to promote equity and inclusion in the classroom.
- Participation in scholarship of teaching and learning activities, including workshops, research projects, and/or conferences at the intersection of curriculum development and diversity, equity, and inclusion.
- Serving as an advisor to programs or affinity groups such as Women in Science and Engineering, Society for Advancement of Chicanos/Hispanics and Native Americans in Science (SACNAS), National Organization for the Professional Advancement of Black

Chemists and Chemical Engineers (NOBCChE) or other equivalent programs in the discipline.

- Pedagogically addressing and responding to the learning needs of students from diverse backgrounds. For example:
  - Development or use of curricula designed to enhance participation of students from groups underserved by higher education;
  - Engagement in training or professional development activities designed to enhance intercultural or intergroup competencies and skills;
  - Ability to integrate contemporary issues of diversity, equity, and inclusion into the classroom.
- Ability to create an inclusive learning environment, addressing one or more of the following issues:
  - How your own and your students' identities (i.e., race, gender, class, background, experience, and levels of privilege) affect classroom dynamics;
  - How diverse perspectives can be integrated into teaching methods and approaches.

#### RESEARCH AND CREATIVE ACTIVITIES

- Authored/coauthored a peer reviewed article related to diversity, equity, and inclusion.
- Authored/coauthored an article for a magazine, popular press, news source related to diversity, equity, and inclusion.
- Generated/participated in a creative work for a peer reviewed source related to diversity, equity, and inclusion.
- Generated/participated in a creative work for a public audience related to diversity, equity, and inclusion.
- Invited to speak academically on issues related to diversity, equity, and inclusion.
- Interviewed by a public source (radio station, documentary, etc.) on issues related to diversity, equity, and inclusion.
- Created or edited educational training and/or teaching materials to be used in a public sphere (museum guidebook, educational pamphlets, etc.) on issues related to diversity, equity, and inclusion.
- Grants or scholarship applications submitted related to diversity, equity, and inclusion.
- Research that addresses issues such as race, gender, ability, diversity, equity, and inclusion.
- Research that addresses health disparities, educational access and achievement, political engagement, economic justice, use of technology and scientific innovation to enhance social mobility, environmental racism, civil and human rights.
- Research that addresses questions of interest to communities historically excluded by or underserved by higher education.

- ❑ Artistic expression and cultural production that reflects culturally diverse communities or voices not well represented in the arts and humanities.
- ❑ Grantsmanship that provides funding for research that focuses on broadening participation and other forms of equity, inclusion, and diversity.
- ❑ Contributions that advance efforts to broaden knowledge and understanding around DEI issues, often utilizing theoretical/conceptual frameworks related to DEI (e.g., focused on historically minoritized populations, the illumination of cultural processes, impact of institutional racism, gender inequity and other issues of disenfranchisement).
- ❑ Contributions to the development of positive DEI practice in research (e.g., moving DEI scholarship into the public realm, building diverse research teams).
- ❑ Commitment to allyship through using research and other forms of knowledge to drive institutional change by, for example, extensive reading or focused coursework, or participation in professional development programs or institutional diversity, equity, and inclusion initiatives.
- ❑ Intellectual themes or trajectories that examine patterns of representation, incorporation, or inclusion within a faculty member's area of expertise.
- ❑ Scholarly productivity in particular texts, data sets, methodological practices, theories or creative discourses that involve equity and inclusion within a faculty member's area of expertise.
- ❑ Research contributions to understanding the barriers facing women and underrepresented minorities in science and other academic disciplines. For example:
  - Studying patterns of participation and advancement of women and minorities in fields where they are underrepresented;
  - Studying socio-cultural issues confronting underrepresented students in college preparation curricula;
  - Evaluating programs, curricula, and teaching strategies designed to enhance participation of underrepresented students in higher education.

#### LEADERSHIP AND SERVICE

- ❑ Leadership in a professional organization's equity, inclusion, and diversity work.
- ❑ Membership on departmental or university committees related to equity and inclusion.
- ❑ Participation in university student pipeline and/or outreach activities.
- ❑ Participation in efforts to increase participation of underrepresented students in undergraduate and graduate programs.
- ❑ Service for or joint initiatives with state or national organizations (e.g., American Economics Association Committee on the Status of Women in the Economics Profession, National Society of Black Physicists, etc.) with an emphasis on diversity, equity, and inclusion.

- ❑ Service on local and/or statewide committees focused on issues of diversity, equity, and inclusion.
- ❑ Leadership in organizing departmental or campus-wide events that encourage self-reflection and education regarding issues of diversity, equity, and inclusion.
- ❑ Participation in academic preparation, outreach, tutoring, pipeline or other programs designed to remove barriers facing women, minorities, veterans, people with disabilities, LGBTQ+ and other individuals who are members of groups historically excluded from higher education.
- ❑ Demonstrated leadership in strengthening ties with tribal colleges, Hispanic Serving and Minority Serving institutions in an effort to facilitate research and/or to enhance the recruitment and retention of underrepresented students, faculty, and staff at CU Denver.
- ❑ Embedding diversity, equity, and inclusion into a professional organization's mission, programming, fundraising, etc.
- ❑ Serving as a Search Advocate on searches outside of home unit.
- ❑ Efforts to advance DEI outside the classroom. For example:
  - Engagement with organizations or programs that are DEI-focused or identity-based, on campus, in discipline/professional societies, or in other community spaces;
  - Active promotion of policies and practices that advance DEI.
- ❑ A record of academic service to advance equitable access to higher education for groups in fields where they are underrepresented (i.e., women, racial/ethnic minorities, first-generation college students, student veterans, etc.).
- ❑ Demonstrated engagement with historically underserved populations, and bringing this experience to the scholarship, teaching, and learning mission of the university. This commitment may be reflected by leadership or active participation in:
  - departmental or institutional committees, task force groups, or other workgroups;
  - local or national service related to diversity, equity, inclusion, and access, such as through professional societies and organizations;
  - scholarship, practice, or policy efforts to advance diversity, equity, inclusion or social justice for historically underrepresented or marginalized groups (at the campus, local community, state, or national levels);
  - other community engagement or outreach activities relevant to advancing diversity, equity, inclusion and access, such as volunteer activities, consulting, or advising.
  - a record of leadership or significant experience performing public service addressing the needs of our increasingly diverse society.

## FREQUENTLY ASKED QUESTIONS (FAQS)

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In committee discussions, these questions were consistently raised. Although short answers are provided to the questions below, these must be agreed upon by Faculty Assembly. Additionally, there are likely more questions that need to be answered.

### **Is this reporting mandatory?**

- No. Faculty are not required to report DEI-related activities.

### **Who has access to these data?**

- This is currently unknown. In the interest of full transparency, faculty should know who has access to their FARs. Faculty should also consider what activities they report publicly (via social media and/or university web pages) related to DEI. The FAR is not a public record as they contain evaluative materials and thus are not subject to open records questions (per Chris Puckett). This could be tested in court.

### **What institutional reporting will use these data?**

- Also unknown and must be determined prior to changing and implementing any DEI-related policies or processes.

### **What protections are afforded to faculty who report DEI activities?**

- Although Chris Puckett implied faculty would be protected, there must be assurance of this from the Chancellor and/or Provost.

*Additional questions were addressed by Managing Associate University Counsel Chris Puckett in the memorandum below.*

DATE: January 31, 2024 (revised March 27, 2024)  
TO: Wendy Bolyard  
FROM: Chris Puckett, Managing Associate University Counsel  
RE: University Employee Legal Protection

Thank you for the opportunity to meet during the fall and discuss the concerns from faculty and Faculty Assembly regarding how changes to our annual evaluation process might impact legal protections afforded to University employees. Specifically, you asked about legal protections for faculty should they be evaluated on Diversity, Equity, and Inclusion activities.

I. University Employees

Question: Would the University defend a faculty member who engaged in DEI activities and was subject to litigation?

Under Colorado law and Regent Law/policy, University employees are indemnified and defended for legal claims brought against them for actions they take within the course and scope of their employment so long as those actions are not willful and wanton<sup>3</sup>. If a faculty member engages in and provides evidence of their DEI activities in response to an evaluation that is required by the University, and legal claims were brought against the faculty member or university arising from those DEI activities, then those activities would in almost all circumstances be within the scope of employment. If so, the University would provide a defense to the faculty member. Colorado law requires that the University provide a defense until a court determines otherwise.

For example, if a faculty member engaged in DEI activities (i.e., recruiting, mentorship, research, teaching) they would be protected from litigation against them for having engaged in those activities or provided information about those activities for a required evaluation. That does not mean that faculty would be immune from consequences if they failed to teach their classes as required to engage in DEI activities, failed to do their job because they engaged in DEI activities, or engaged in criminal activity while engaging in DEI activities (most criminal activity would be considered willful and wanton). University policy merely recognizes that employees are entitled to a legal defense when they are engaging in activities within the course and scope of their employment.

When evaluating whether something is in the course and scope of one's duties, faculty primary unit criteria would be critical. Primary unit criteria are not all inclusive in the kinds of activities that would be protected, but they would establish the scope of the protection provided to the employee.

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<sup>3</sup> Willful and wanton conduct is defined as "...conduct purposefully committed which the actor must have realized as dangerous, done heedlessly and recklessly, without regard to consequences, or of the rights and safety of others, particularly the plaintiff." 13-21-102, C.R.S. Willful and wanton conduct would include an employee who sexually assaults a student, an employee who purposely and knowingly sets fire to a building/engaged in arson, and other intentional acts intended to cause harm and damage.

## II. Retaliation

Question: Would faculty employees be protected from retaliation (presumably from their supervisor, chair, dean or the University) for having engaged in DEI activities? I don't think there is an entirely clear answer to this question because there are few cases on point.

- A. Anti-Discrimination/Harassment Provisions: As noted above, DEI activities would (in almost all circumstances) be considered part of an employee's job. If a supervisor took an adverse employment action against an employee because they engaged in required/evaluated DEI activities, then that employee could file a complaint with the Colorado Civil Rights Division/Equal Employment Opportunity Commission and then file legal claims against the University under Colorado's Anti-Discrimination Act and federal law. Whether the employee could prove their case or how a court would handle that case is not entirely clear.

Under state and federal law, it is unlawful for an employer to take an adverse action (typically defined as an action affecting pay, status, or tenure or a tangible employment action that would well dissuade a reasonable person from engaging in the protected activity) because an employee engages in protected civil rights activities. In simpler terms, employers can't take actions against an employee who supports or participates in civil rights activities. Whether specific authorized/evaluated DEI activities would be considered protected civil rights activity is a fact specific evaluation and would depend on many factors include what the activity included, who knew about the activity, and whether there were direct statements from the employer.

Many diversity activities could be considered opposition to discrimination. Whether an employee could link those activities to an adverse action is where cases are won or lost, except when that connection is explicit. In jurisdictions where DEI activities have been explicitly outlawed or discipline brought admittedly against someone for having engaged in DEI activities, the case would be much easier to prove. I expect we will begin to see these cases around the country as more jurisdictions have implemented anti-DEI activity legislation.

In addition to falling under employment laws, an employee may be able to claim protection under Colorado's Public Accommodation law which also includes an anti-retaliation provision. These laws were originally created after the Civil War and broadly protect individuals who oppose discrimination in nearly all activities, including education. 24-34-601, C.R.S. Again, any claims under this statute would be fact specific, but most DEI activities address historic discrimination and thus this law would provide them protection. The law makes retaliation unlawful and an impacted employee could contact the Colorado Civil Rights Division and file a complaint or pursue legal remedies in court. There are not many cases on public accommodation so how a court would handle the intersection between employment and this law is unclear, but the law gives a judge significant room to craft potential remedies for retaliation.

- B. Other anti-retaliation laws/potential claims

- a. Mutual Aid under SB 23-111

Colorado's recently adopted Protections for Public Workers Act may also protect employees engaging in employer evaluated DEI activities. PROPWA enshrines in Colorado state law much of what was already protected under the U.S. Constitution. Specifically, this law states,



The general assembly further declares that public employees should have the following rights and should be protected from retaliation, including discipline or termination, if they choose to exercise these rights:

- (a) To speak out on issues of public concern and fully engage in the political process outside of work in the same manner as other citizens of Colorado;
- (b) To speak out about concerns with the terms and conditions of their employment;
- (c) To engage in protected concerted activity for the purpose of mutual aid or protection;
- (d) To organize, form, join, or assist an employee organization or to refrain from doing so; and
- (e) To pursue an employee organization with their coworkers without interference.

The law authorized Colorado's Department of Labor and Employment to enforce this law and protects employees who engage in collective action from retaliation from their employer.

It is unclear and untested how this law would apply to an individual employee who engaged in evaluated DEI activities. The focus of the law is collective action by groups of employees who seek mutual aid or support. This arises most often in the context of employees who gather to pursue collective bargaining, raises concerns regarding the workplace, or are seeking redress or a form of recognition by their employer.

In addition to the collective bargaining protection the law does provide protection for employees who engage in speech on "workplace issues." Undefined under the recently proposed rules for PROPWA, it's not entirely clear whether this would extend to evaluated DEI activities.

b. First Amendment Constitutional Claims

Under post-civil war laws, employees might be able to claim protection under the First Amendment of the U.S. Constitution. Suing for a violation of constitutional rights is not easy and quite complicated. It is a high and requires jumping through many hoops including suing an individual in their individual capacity. However, the First Amendment does protect employees from retaliation who engage in speech of "public concern." It is unclear whether a court would consider evaluative DEI activities as speech of public concern, but in other contexts speaking about discrimination and harassment has been found to be protected speech.

c. Contractual Claims

If an employee were required or expected to perform DEI activities as part of their job and then experienced retaliation, an employee might be able to bring a claim for violation of contract/quasi contract. In this case, the employee could argue that they were performing required/expected duties. Retaliation would engaging in the terms of the contract could be argued are a violation contract.

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