



FIRE

Foundation for Individual
Rights and Expression

April 7, 2023

Kevin M. Guskiewicz, Ph.D.
Office of the Chancellor
The University of North Carolina at Chapel Hill
103 South Building, Campus Box 9100
Chapel Hill, North Carolina 27599-9100

Sent via U.S. Mail and Electronic Mail (chancellor@unc.edu)

Dear Chancellor Guskiewicz:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is concerned by changes to the annual review and promotion and tenure standards at the UNC School of Medicine and its Department of Allied Health Sciences (DAHS) that require faculty to demonstrate commitment to diversity, equity, and inclusion (DEI) and to “integrate social justice” into their teaching, research, and service.²

More specifically,³ in June 2020, the School of Medicine created a “Task Force to Integrate Social Justice into the Curriculum,”⁴ which, later that fall, released a 45-page report outlining recommendations to achieve its stated aim. Among its recommendations, the report calls for medical school faculty to be “assessed regarding their contributions in the domain of social justice”⁵ through departmental evaluations,⁶ annual reviews,⁷ and promotion and tenure

¹ For more than 20 years, FIRE has defended freedom of expression, conscience, and religion, and other individual rights on America’s college campuses. You can learn more about our recently expanded mission and activities at thefire.org.

² Julia Draper et al., UNC School of Medicine, Task Force to Integrate Social Justice into the Curriculum, Final Report 36 (2020) [hereinafter SOM Report] (on file with author).

³ The recitation here reflects our understanding of the pertinent facts, which is based on public information. We appreciate that you may have additional information to offer and invite you to share it with us.

⁴ SOM REPORT, *supra* note 2.

⁵ *Id.* at 33.

⁶ *Id.* at 33 (“100% of departments will have evaluation tools that assess and incentivize a faculty member’s contributions to social justice in their teaching by 2024.”).

⁷ *Id.* at 13 (“*Recommendation 3.5*: Develop uniform policies and procedures on how social justice contribution is integrated into the annual reviews and tied to incentives.”).

policies.⁸ Then, after the School of Medicine released its 2020 report, DAHS created its own “Task Force to Integrate Social Justice into the Allied Health Curricula,”⁹ which drafted a report calling for the department to incorporate DEI and social justice initiatives into faculty peer evaluations,¹⁰ annual reviews,¹¹ and promotion and tenure decisions.¹² DAHS administrators, aware of “external pushback on [their] SJ Task Force work,” intended to keep the report, and its implementation strategies, hidden while the School of Medicine faced criticism from its board of trustees and the general public on its 2020 report.¹³

FIRE appreciates that UNC is one of the few institutions in the country whose policies that regulate student expression earn a “green light” rating from FIRE. We are, however, concerned that the School of Medicine’s proposal creates inherently subjective standards that will compel faculty to voice or demonstrate commitments to prescribed views on contested questions of politics or morality to avoid adverse employment action. Not only does this imperative constitute viewpoint discrimination and compelled speech proscribed by the First Amendment, it violates the UNC system-wide policy on employee political activities—threatening to cast a pall of orthodoxy over the academic environment.¹⁴

It is well-settled that the First Amendment binds public universities like UNC,¹⁵ such that its decisions and actions—including maintenance of policies implicating faculty expression—

⁸ *Id.* at 13 (“*Recommendation 3.6*: Revise Promotion and Tenure Guidelines to include a social justice domain required for promotion.”); 33 (“Promotion and Tenure Guidelines will have social justice or DEI added as a domain required for promotion for all faculty by 2024.”).

⁹ Department of Allied Health Sciences, Task Force to Integrate Social Justice into the Allied Health Curricula, Final Report 2 (2021) [hereinafter DAHS Report] (on file with author).

¹⁰ *Id.* at 6 (“*Recommendation 3.6*: Develop a process to articulate how social justice is incorporated into teaching/clinical/research and associated rubrics for Peer Teaching Evaluation and other types of faculty evaluation.”); 21 (“Update Annual Review Form to include key items on inclusion of social justice in faculty instructional material, participation in annual required training in social justice principles, and items from student course evaluations.”).

¹¹ *Id.* at 22 (“All annual faculty reviews will include an assessment of how the faculty member contributed to social justice in their work (teaching/clinical/research) and this assessment will be linked to the department’s compensation plan and other incentives by 2023.”).

¹² *Id.* at 20 (“All Peer Teaching Evaluations for promotion or other types of faculty evaluation (Peer Clinical Evaluation) will include a social justice component as part of the evaluation by July 2022.”).

¹³ Email from E. Nate Thomas, Vice Dean for DEI, to Jeanette Gowen Cook, Professor and Chair, Dep’t of Biochemistry and Biophysics, and Stephen R. Hooper, Assoc. Dean of Med., Chairperson of the Dep’t of Health Sci. (Feb. 25, 2022, 8:52:16 PM) (on file with author).

¹⁴ UNIV. N.C. SYS., POLITICAL ACTIVITIES OF EMPLOYEES (2023), <https://www.northcarolina.edu/apps/policy/doc.php?id=125> [<https://perma.cc/UG2V-JA8M>] (“To mitigate the risk of compelled speech that undermines the intellectual freedom and fostering of free expression required of the University of North Carolina by Article 36 of Chapter 116 of the General Statutes and embraced in Chapter VI of the UNC Code and Section 1300.8 of UNC Policy, the University shall neither solicit nor require an employee or applicant for academic admission or employment to affirmatively ascribe to or opine about beliefs, affiliations, ideals, or principles regarding matters of contemporary political debate or social action as a condition to admission, employment, or professional advancement.”).

¹⁵ *Healy v. James*, 408 U.S. 169, 180 (1972).

must comply with the First Amendment.¹⁶ Universities have legitimate interests in promoting inclusive and enriching campus environments, including for students or faculty from backgrounds traditionally underrepresented in academia. But if government entities wish to “disseminate an ideology, no matter how acceptable to some, such interest cannot outweigh an individual’s First Amendment right to avoid becoming the courier for such message.”¹⁷

This principle applies with particular force at public institutions of higher education, as free speech is the “lifeblood of academic freedom.”¹⁸ Universities, accordingly, “occupy a special niche in our constitutional tradition,”¹⁹ and academic freedom is an area “in which government should be extremely reticent to tread.”²⁰ As the Supreme Court explained in overturning legal barriers to faculty members with assertedly “seditious” views:

Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom. . . . The Nation’s future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth out of a multitude of tongues, rather than through any kind of authoritative selection.²¹

UNC therefore cannot condition faculty employment or advancement on pledging allegiance to a contested set of ideological beliefs. Yet, the School of Medicine and DAHS’s new DEI and social justice requirements violate these settled legal principles by requiring faculty members to embed specific perspectives on disputed political and ideological issues in their academic activities to be eligible for promotion and tenure. Such a litmus test impinges on faculty members’ scholarly autonomy and freedom to dissent from the prevailing consensus on issues of public or academic concern.

The School of Medicine’s conception of DEI²²—which focuses on complex group identities based on immutable characteristics and endorses “equity”-based solutions that acknowledge historic and contemporary injustices—is laden with ideological assumptions that currently

¹⁶ *Dambrot v. Central Mich. Univ.*, 55 F.3d 1177 (6th Cir. 1995).

¹⁷ *Wooley v. Maryland*, 430 U.S. 705, 717 (1977); *see also Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 573 (1995) (government “may not compel affirmance of a belief with which the speaker disagrees”).

¹⁸ *DeJohn v. Temple Univ.*, 537 F.3d 301, 314 (3d Cir. 2008); *see also Rosenberger v. Rectors of the Univ. of Va.*, 515 U.S. 819, 836 (1995) (“For the University, by regulation, to cast disapproval on particular viewpoints of its students risks the suppression of free speech and creative inquiry in one of the vital centers for the Nation’s intellectual life, its college and university campuses.”).

¹⁹ *Grutter v. Bollinger*, 539 U.S. 306, 329 (2003).

²⁰ *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957).

²¹ *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967) (cleaned up).

²² SOM REPORT, *supra* note 2, at 15–19.

drive substantial debate and controversy.²³ However strongly UNC may believe in certain tenets of social justice and DEI, it has no authority to force its faculty to take any particular side of this debate. Yet the new standards establish a means to discriminate against faculty who disagree with—or whose track record reflects insufficient dedication to—UNC’s positions on those subjects. FIRE is concerned that faculty with minority, dissenting, unpopular—or even nuanced—views on the subject will face a marked disadvantage in seeking tenure and promotion.²⁴

To further illustrate our concern by analogy, we trust UNC would readily recognize the problem with evaluating faculty based on how well they demonstrate a commitment to “patriotism,” “racial colorblindness,” or “individualism.” Just as with social justice and DEI, these criteria entail inherently political or moral viewpoint-dependent assessments that impose negative consequences on faculty with personal or professional beliefs and commitments that differ from those of their colleagues or the university. This violates members’ academic freedom and liberty to follow the dictates of their own consciences.

FIRE would not object to UNC recognizing faculty members’ voluntarily chosen and relevant teaching, research, and service activities and accomplishments that might be characterized as social justice contributions. But even if the new social justice requirement gives faculty some leeway in choosing activities to fulfill it, the requirement still threatens their academic freedom. It coerces faculty whose academic interests may lie elsewhere—but who wish to maximize their chances of obtaining tenure or promotion—to substantially reorient their scholarly pursuits or service to conform with UNC’s ideological preferences.

In sum, FIRE urges UNC, the School of Medicine, and DAHS to consider the consequences of the new social justice reappointment, promotion, and tenure criteria on faculty whose views, pedagogical choices, or associations are unpopular or simply out of step with the majority on or off campus. As a public university, bound to respect faculty’s expressive freedoms, UNC must judge faculty performance based on the quality of their academic work—not their degree

²³ See, e.g., Dan Morenoff, *We Must Choose ‘Equality,’ Not ‘Equity’*, NEWSWEEK (Apr. 25, 2022), <https://www.newsweek.com/we-must-choose-equality-not-equity-opinion-1699847> (arguing that equity wrongly requires “active discrimination against those who’d do too well under equal treatment” and defines fairness as “whatever it takes to produce matching results for disparate groups”); Steven Mintz, *How to Stand Up for Equity in Higher Education*, INSIDE HIGHER ED (Apr. 20, 2021), <https://www.insidehighered.com/blogs/higher-ed-gamma/how-stand-equity-higher-education> (arguing for equity in higher education, which “implies much more than equal opportunity; it entails equality of resources, ideas, respect and outcomes” and extends to pedagogical reforms such as “decolonizing the curriculum”); Conor Friedersdorf, *Can Chloé Valdary Sell Skeptics on DEI?*, ATLANTIC (Jan. 31, 2021), <https://www.theatlantic.com/ideas/archive/2021/01/can-chloe-valdary-sell-skeptics-dei/617875> (describing proliferation of DEI programs in the aftermath of the police killing of George Floyd: “The diversity, equity, and inclusion industry is booming as corporations, government agencies, high schools, colleges, and nonprofit organizations clamor for its services. Advocates insist that formal instruction in anti-racism yields more inclusive, equitable institutions. Skeptics object to what they characterize as coerced indoctrination in esoteric theories, or charge that prominent consultants like Robin DiAngelo, author of the best-selling *White Fragility*, traffic in false and divisive racial stereotypes.”).

²⁴ See *FIRE Statement on the Use of Diversity, Equity, and Inclusion Criteria in Faculty Hiring and Evaluation*, FOUND. INDIVIDUAL RTS. AND EXPRESSION, <https://www.thefire.org/research-learn/fire-statement-use-diversity-equity-and-inclusion-criteria-faculty-hiring>.

of conformity to certain ideological tenets. To protect academic freedom, honor faculty members' individuality, and meet its binding legal obligations, FIRE calls on UNC to eliminate or revise this mandate.

We appreciate your time and attention to our concerns. We respectfully request a substantive response to this letter no later than Friday, April 21, 2023.

Sincerely,

A handwritten signature in blue ink that reads "Harrison M. Rosenthal". The signature is written in a cursive, flowing style.

Harrison M. Rosenthal, J.D., Ph.D.
Litigation Fellow

Cc: Stephen R. Hooper, Ph.D., Associate Dean and Chair, Department of Health Sciences,
UNC School of Medicine
Wesley Burks, M.D., Dean, UNC School of Medicine, Vice Chancellor for Medical
Affairs, CEO of UNC Health