



# FIRE

Foundation for Individual  
Rights and Expression

July 11, 2022

Jay Hess, MD, PhD, MHSA  
Dean, Indiana University School of Medicine  
340 W. 10<sup>th</sup> St., FS 5100  
Indianapolis, Indiana 46202

*Sent via U.S. Mail and Electronic Mail (iusmdean@iu.edu)*

Dear Dean Hess:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech, expression, and conscience, and other individual rights on campus, is concerned by the Indiana University School of Medicine's (IUSM) modification of its promotion and tenure standards to require faculty to discuss their efforts to advance diversity, equity, and inclusion (DEI).

We understand universities have a legitimate interest in promoting an inclusive and enriching campus environment, including for students or faculty from backgrounds traditionally underrepresented in academia. However, IUSM's proposal raises concerns that the new standards will compel faculty to voice or demonstrate commitments to prescribed views on contested questions of politics or morality to avoid adverse consequences in tenure and promotion. This kind of imperative would amount to viewpoint discrimination and compelled speech proscribed by the First Amendment, threatening to cast a pall of orthodoxy over the academic environment.

## **I. IUSM Approves Addition of DEI Criteria to Tenure and Promotion Standards**

Earlier this year, IUSM announced a proposal to modify its promotion and tenure expectations to require faculty to "show effort toward advancing DEI in at least one mission area for which they are evaluated by including a short narrative DEI summary in their personal statement and by listing DEI-related activities on their CVs."<sup>1</sup>

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<sup>1</sup> *Announcement of Proposed Diversity, Equity and Inclusion Standards*, IND. UNIV. SCH. OF MED., <https://faculty.medicine.iu.edu/pt/announcement-of-proposed-diversity-equity-and-inclusion-standards/> (last visited July 11, 2022) [<https://perma.cc/Y2VY-FVB7>].

IUSM has also produced a document defining DEI and listing example activities.<sup>2</sup> The guide defines “diversity” as “[p]erceived human differences in appearance, thinking, and actions, shaped by historical and social systems of advantage and disadvantage,” and focuses on “intersectional identities formed around ideas and experiences related to race, ethnicity, class, color, gender identity, gender expression, sexual orientation,” and other group identity characteristics.<sup>3</sup> The guide contrasts “equity” with “equality,” stating that while the latter “recognizes a common humanity, ‘equity’ recognizes the distinct needs of individuals and groups, which cannot be addressed with generalized solutions that fail to acknowledge structural inequities.”<sup>4</sup>

Examples of activities that may fulfill the DEI requirement include (verbatim):<sup>5</sup>

- Scholarship/research/creative activity focused on historically marginalized and diverse communities
- Inclusive teaching practices (e.g., pedagogy, DEI content, multicultural courses, global perspectives)
- Curriculum development and/or revision related to DEI topics
- Community-based outreach to historically marginalized communities (e.g., programming for K-12 students, community organizations, religious institutions, workshops for high school students to address LGBTQ+ awareness and resources)
- Activities and consulting work (paid or unpaid) related to DEI community activities and organizations
- Faculty development toward increasing one’s self-awareness and knowledge, e.g., engaging in CME and/or professional development events, programs, modules, or workshops on DEI topics such as microaggressions, unconscious bias, upstander training; culturally relevant mentoring; inclusive teaching; DEI reading groups

The proposal is intended to “align faculty expectations with the values articulated” in the newly revised Honor Code,<sup>6</sup> which states that faculty and students are “expected to uphold” DEI commitments, including (verbatim):<sup>7</sup>

- I commit to listening to and respecting the perspectives of others, aiming to learn from them what actions, practices, policies, and structures they experience as racist, discriminatory, exclusionary, or otherwise detrimental to the community.

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<sup>2</sup> IND. UNIV. SCH. OF MED., EXAMPLE FACULTY ACTIVITIES TOWARD DIVERSITY, EQUITY AND INCLUSION, <https://faculty.medicine.iu.edu/wp-content/uploads/2021/12/Example-Faculty-Activities-Toward-Diversity-Equity-and-Inclusion-FAPDD-PNT-111520.pdf> (last visited July 11, 2022) [<https://perma.cc/9UJ3-7CFD>].

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Announcement of Proposed Diversity, Equity and Inclusion Standards*, *supra* note 1.

<sup>7</sup> *Honor Code*, IND. UNIV. SCH. OF MED., <https://medicine.iu.edu/about/policies-guidelines/honor-code> (last visited July 11, 2022) [<https://perma.cc/5BJ5-XHS7>].

- I will champion health care equity in both medicine and society and be committed to transforming the way research is conducted and care is provided in order to eliminate health disparities.

The proposal also “aligns IUSM more closely with recently approved efforts by the [Indiana University—Purdue University Indianapolis (IUPUI)] Faculty Council to recognize DEI activities for promotion and tenure.”<sup>8</sup> IUPUI has created a DEI-centered tenure and promotion option, which requires that a candidate “articulates their personal role as an essential and generative actor within diversity initiatives” and “[p]resents a philosophy of diversity, equity and inclusion that is evidenced through related activities and achievements.”<sup>9</sup>

On June 16, the IUSM Faculty Steering Committee approved the proposed modification to tenure and promotion requirements, which are set to phase in over the next three years.<sup>10</sup>

## **II. The First Amendment Prohibits IUSM from Requiring Faculty to Demonstrate Commitment to Specific Ideological Views**

It has long been settled law that the First Amendment is binding on public universities like Indiana University.<sup>11</sup> Accordingly, the decisions and actions of a public university—including the maintenance of policies implicating student and faculty expression<sup>12</sup>—must be consistent with the First Amendment. When 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.”<sup>13</sup>

This principle applies with particular force at public institutions of higher education, as free speech is the “lifblood of academic freedom.”<sup>14</sup> Universities “occupy a special niche in our constitutional tradition,”<sup>15</sup> and academic freedom is an area “in which government should be

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<sup>8</sup> *Announcement of Proposed Diversity, Equity and Inclusion Standards*, *supra* note 1.

<sup>9</sup> IND. UNIV.—PURDUE UNIV. INDIANAPOLIS, CIRCULAR: OVERVIEW OF PROPOSED CHANGES TO CAMPUS PROMOTION AND TENURE REVIEW (Spring 2021), [https://academicaffairs.iupui.edu/AAContent/Html/Media/AAContent/02-PromotionTenure/PromotionAndTenure/circular-background-description-integrative-dei-case-for-IFC\\_3\\_12.pdf](https://academicaffairs.iupui.edu/AAContent/Html/Media/AAContent/02-PromotionTenure/PromotionAndTenure/circular-background-description-integrative-dei-case-for-IFC_3_12.pdf) [<https://perma.cc/3DQW-GXLA>].

<sup>10</sup> Email from Sam Yeap, MD, MS, President, Ind. Univ. Sch. of Med. Faculty (June 16, 2022, 3:21 PM) (on file with author).

<sup>11</sup> *Healy v. James*, 408 U.S. 169, 180 (1972).

<sup>12</sup> *Dambrot v. Central Mich. Univ.*, 55 F.3d 1177 (6th Cir. 1995).

<sup>13</sup> *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”).

<sup>14</sup> *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.”).

<sup>15</sup> *Grutter v. Bollinger*, 539 U.S. 306, 329 (2003).

extremely reticent to tread.”<sup>16</sup> As the Supreme Court explained in overturning legal barriers to faculty members with assertedly “seditious” views:<sup>17</sup>

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.

IUSM therefore may not condition faculty employment or advancement on pledging allegiance to a contested set of ideological beliefs. Yet the newly approved DEI standards transgress First Amendment principles by requiring faculty members to embrace specific perspectives on disputed political and ideological issues and to embed those beliefs 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 without suffering diminished career prospects.

FIRE would not object to IUSM recognizing faculty members’ voluntarily chosen, relevant teaching, research, and service activities and accomplishments that might happen to be characterized as DEI contributions. But even if the new DEI 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 administrative service to conform with IUSM’s ideological preferences. The requirement even reaches beyond the classroom and laboratory, selectively rewarding faculty who engage in DEI-related activism.

Moreover, IUSM’s express intention to align the requirement with the Honor Code values and with IUPUI’s new DEI standards—both of which explicitly call for strong DEI commitments—only amplifies our concern that IUSM will impermissibly penalize faculty who fail to enthusiastically affirm their devotion to these values in their narrative DEI statements and to demonstrate that commitment across a range of activities.

IUSM’s conception of DEI—which focuses on group identities based on immutable characteristics and endorses “equity”-based solutions that target specific groups—is laden with ideological assumptions that currently drive substantial debate and controversy.<sup>18</sup>

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<sup>16</sup> *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957).

<sup>17</sup> *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967) (cleaned up).

<sup>18</sup> 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),

However strongly IUSM may believe in certain tenets of 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—IUSM’s positions on DEI. FIRE is concerned that faculty with minority, dissenting, or unpopular views on the subject will face a marked disadvantage in seeking tenure and promotion.

To further illustrate our concern by analogy, we trust that IUSM would readily recognize the problem with evaluating faculty based on affirmation of the importance of “patriotism,” “colorblindness,” or “individualism,” or their demonstration of activities that promote these values. Just as with 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 medical school. This would infringe faculty members’ academic freedom and liberty to follow the dictates of their own consciences.

### **III. Conclusion**

FIRE urges IUSM to consider the consequences of the new DEI tenure and promotion criteria on faculty whose views, pedagogical choices, or associations are unpopular or simply out-of-step with the majority on or off campus. IUSM should judge those faculty based on the quality of their academic work, not their degree of conformity to certain ideological tenets. To protect academic freedom and honor faculty members’ individuality, FIRE calls on IUSM to eliminate or revise this mandate.

We appreciate your time and attention to our concerns. We respectfully request a response to this letter no later than July 25, 2022.

Sincerely,



Aaron Terr  
Senior Program Officer, Campus Rights Advocacy

Cc: Indiana University Board of Trustees  
Pamela Whitten, PhD, President, Indiana University

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<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.”).