



FIRE

Foundation for Individual
Rights and Expression

August 10, 2022

Michael H. Schill
Office of the President
University of Oregon
1226 University of Oregon
Eugene, Oregon 97403-1226

Sent via U.S. Mail and Electronic Mail (pres@uoregon.edu)

Dear President Schill:

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 University of Oregon policies requiring prospective and current faculty to submit statements discussing their interest in and contributions to 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, UO's DEI statement policies impose an ideological litmus test, impermissibly discriminating against faculty who fail to demonstrate sufficient commitment to ordained views on contested questions of politics and morality. These mandates implicate faculty member's most essential freedoms of expression and conscience, exceed the boundaries of the university's authority in such matters as established by the First Amendment and principles of academic freedom, and threaten to cast a pall of orthodoxy over the academic environment.

FIRE calls on UO to eliminate or revise its DEI statement policies to comply with the university's legal and moral obligations.

I. UO Requires Faculty Applicants and Current Faculty to Submit DEI Statements

UO requires DEI statements from tenure-track faculty candidates, faculty seeking promotion or tenure, and faculty undergoing pre- or post-tenure review, "in keeping with [UO's] goals of

becoming an institution committed to antiracism and other forms of anti-oppression more generally.”¹

For hiring statements, “a discussion of contributions to institutional equity may include efforts to address and remove barriers to allow Black, Indigenous, and people of color (BIPOC), people with disabilities, women, and people with the full range of gender and sexual identities to contribute fully to our institutional success,” while inclusion contributions “may involve efforts to restructure existing systems, practices and norms to ensure the meaningful participation and leadership of people from diverse racial, ethnic and other backgrounds, experiences and perspectives in decision-making processes in ways that move the institution forward in its focus on academic excellence.”² Applicants may discuss DEI contributions in their research, teaching, and service statements or write a “stand-alone” DEI statement.³

Research contributions include those that “advance efforts to broaden knowledge and understanding around DEI issues, often utilizing theoretical/conceptual frameworks related to DEI” and “[c]ommitment to allyhood 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 (DEI) initiatives.”⁴ Faculty may also discuss teaching contributions, such as “[d]eveloping courses or curricula materials that focus on themes of diversity, equity, and inclusion or the incorporation of underrepresented groups,”⁵ and service contributions, such as “[e]mbedding equity, inclusion and diversity into a professional organization’s mission, programming, fundraising, etc.” and “leadership or active participation” in “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).”⁶

UO asks faculty search committees to use a rubric to guide its evaluation of applicants’ DEI statements.⁷ The rubric gives low scores to candidates who, for example, “state that it’s better not to have outreach or affinity groups aimed at underrepresented individuals because it keeps them separate from everyone else, or will make them feel less valued,” or who “[o]nly mention[]

¹ *Diversity, Equity, and Inclusion Statement Guidance for TTF Searches*, UNIV. OF OR., <https://provost.uoregon.edu/diversity-equity-and-inclusion-statement-guidance-ttf-searches> [<https://perma.cc/D7H3-Q8XZ>].

² *Id.*

³ *Id.*

⁴ UNIV. OF OR., SPECIFIC EXAMPLES OF SCHOLARSHIP, RESEARCH OR CREATIVE ACTIVITY RELATED TO INSTITUTIONAL EQUITY AND INCLUSION, <https://provost.uoregon.edu/sites/provost1.uoregon.edu/files/2021-05/research-pdf-2.pdf> [<https://perma.cc/9ELD-D5LN>].

⁵ UNIV. OF OR., SPECIFIC EXAMPLES OF EVIDENCE THAT FACULTY MIGHT USE TO SHOW THEIR CONTRIBUTION TO INSTITUTIONAL EQUITY AND INCLUSIVE TEACHING, <https://provost.uoregon.edu/sites/provost1.uoregon.edu/files/2021-05/teaching-pdf.pdf> [<https://perma.cc/PD45-9LU3>].

⁶ UNIV. OF OR., SPECIFIC EXAMPLES OF SERVICE RELATED TO INSTITUTIONAL EQUITY AND INCLUSION, <https://provost.uoregon.edu/sites/provost1.uoregon.edu/files/2021-05/service-pdf.pdf> [<https://perma.cc/7P24-WD2Z>].

⁷ *Diversity, Equity, and Inclusion Statement Guidance for TTF Searches*, *supra* note 1.

activities that are already the expectation of faculty as evidence of commitment and involvement,” such as the statement: “I always invite and welcome students from all backgrounds to participate in my research lab, and in fact have mentored several women.”⁸ High scores accrue to a candidate who “[d]iscusses diversity, equity, and inclusion as core values that every faculty member should actively contribute to advancing” and “[i]ntends to be a strong advocate for diversity, equity and inclusion within the department/school/college and also their field.”⁹

UO similarly requires tenure and promotion candidates, as well as faculty undergoing pre- or post-tenure review, to discuss their contributions to “institutional equity and inclusion” in a three to six page personal statement.¹⁰ Examples of contributions include “research interests in subjects that will contribute to diversity and equal opportunity in higher education,” “[d]eveloping courses or curricula materials that focus on themes of diversity, equity, and inclusion or the incorporation of underrepresented groups,” and “[s]ervice on local and/or statewide committees focused on issues of equity and inclusion.”¹¹

II. The First Amendment Prohibits UO from Requiring Faculty to Demonstrate Commitment to Prescribed Ideological Views

It has long been settled law that the First Amendment is binding on public universities like UO.¹² Accordingly, the decisions and actions of a public university—including the maintenance of policies implicating student and faculty expression¹³—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.”¹⁴ The Supreme Court has repeatedly “invalidat[ed] or recogniz[ed] as invalid government action that inhibits belief and association through the

⁸ UNIV. OF OR., RUBRIC TO ASSESS FACULTY/CANDIDATE CONTRIBUTIONS TO DIVERSITY, EQUITY, AND INCLUSION, https://provost.uoregon.edu/sites/provost1.uoregon.edu/files/2021-05/rubric-to-assess-faculty_candidate-contributions-to-diversity-equity-and-inclusion.pdf [<https://perma.cc/FG82-Q9Q7>].

⁹ *Id.*

¹⁰ *Faculty Equity Statements for Tenure, Promotion and Review*, UNIV. OF OR., <https://inclusion.uoregon.edu/content/faculty-equity-statements-tenure-promotion-and-review> [<https://perma.cc/39W3-KGGF>]; UNIV. OF OR., EQUITY AND INCLUSION IN PERSONAL STATEMENTS FOR REVIEWS OF BARGAINING UNIT FACULTY, <https://inclusion.uoregon.edu/sites/inclusion2.uoregon.edu/files/updatedbestpracticesforequityandinclusioninpersonalstatementsforreviewsofbargainingunitfaculty.pdf> [<https://perma.cc/92VS-PPUE>].

¹¹ EQUITY AND INCLUSION IN PERSONAL STATEMENTS FOR REVIEWS OF BARGAINING UNIT FACULTY, *supra* note 10.

¹² *Healy v. James*, 408 U.S. 169, 180 (1972).

¹³ *Dambrot v. Central Mich. Univ.*, 55 F.3d 1177 (6th Cir. 1995).

¹⁴ *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 affirmation of a belief with which the speaker disagrees”).

conditioning of public employment on political faith,”¹⁵ including a government employer’s decision not to hire a job candidate based on the candidate’s political associations or beliefs.¹⁶

These principles apply with particular force at public institutions of higher education, as free speech is the “lifeblood of academic freedom.”¹⁷ Universities “occupy a special niche in our constitutional tradition,”¹⁸ and academic freedom is an area “in which government should be extremely reticent to tread.”¹⁹ As the Supreme Court explained in overturning legal barriers to faculty members with assertedly “seditious” views:²⁰

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.

UO’s Academic Freedom policy enshrines similar protections, guaranteeing that “members of the UO community have autonomous freedom to conduct research and produce creative work, and to publish and disseminate that work, limited only by the standards and methods of accountability established by their profession and their individual disciplines.”²¹ In matters of teaching, faculty “have the right to investigate and discuss matters, including those that are controversial, inside and outside of class, without fear of institutional restraint. Matters brought up in class should be related to the subject of courses or otherwise be educationally relevant, as determined primarily by the faculty member in charge of the class.”²²

Yet, the DEI statement policies transgress these constitutional and institutional 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 hiring, promotion, and tenure. UO may not restrict faculty members’ liberty in and outside of

¹⁵ *Elrod v. Burns*, 427 U.S. 347, 357 (1976).

¹⁶ *Rutan v. Republican Party of Ill.*, 497 U.S. 62, 76–77 (1990); *see also Wagner v. Jones*, 664 F.3d 259, 269 (8th Cir. 2011) (reversing trial court’s dismissal of plaintiff’s lawsuit alleging she was denied a position as a legal research and writing instructor at the University of Iowa College of Law because of her political views, as “[t]he state can neither directly nor indirectly interfere with an employee’s or potential employee’s rights to association and belief”).

¹⁷ *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.”).

¹⁸ *Grutter v. Bollinger*, 539 U.S. 306, 329 (2003).

¹⁹ *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957).

²⁰ *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967) (cleaned up).

²¹ *Academic Freedom*, UNIV. OF OR., <https://policies.uoregon.edu/node/218> [<https://perma.cc/AD2J-4353>].

²² *Id.*

the classroom for the purpose of advancing preferred views on these issues. 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, as guaranteed to them by the First Amendment and UO policy.

FIRE would not object to UO simply recognizing applicants' and 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 current DEI requirements give faculty some leeway in choosing activities to fulfill them, they still threaten academic freedom. The mandates coerce faculty whose academic interests may lie elsewhere—but who wish to maximize their chances of obtaining employment, tenure, or promotion—to substantially reorient their scholarly pursuits to conform with UO's ideological aims, and to write narrative statements enthusiastically embracing UO's perspectives on DEI-related issues. The requirements even reach beyond the classroom and laboratory, selectively rewarding faculty who engage in DEI-related activism.

However strongly UO may believe in certain tenets of DEI, it has no authority to force its faculty to take any particular stance on them. Yet the DEI statement policies establish a means to discriminate against faculty who disagree with—or whose track record reflects insufficient dedication to—UO's positions on matters of public and academic concern.²³ FIRE is concerned that scholars with minority, dissenting, unpopular—or even nuanced—views on the subject will face a marked disadvantage in seeking employment, promotion, or tenure.

To further illustrate our concern by analogy, we trust that UO would readily recognize the problem with evaluating faculty based on affirmation of the importance of “patriotism,” “individualism,” or “racial color-blindness,” or on involvement in activities or organizations promoting these values. Just as with DEI, these criteria entail inherently political or moral viewpoint-dependent assessments that impose negative consequences on current and prospective faculty whose views, pedagogical choices, associations, or personal or professional commitments are unpopular or simply out-of-step with the majority on or off campus. This infringes on faculty members' academic freedom and liberty to follow the dictates of their own consciences, and undermines UO's “basic commitment to advancing knowledge and understanding,” which necessitates “open, vigorous, and challenging debate across the full spectrum of human issues as they present themselves to the university community.”²⁴

²³ The concept of “equity,” for example, currently drives significant debate and controversy. *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”).

²⁴ *Academic Freedom*, *supra* note 21.

III. Conclusion

UO should judge 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 and expressive rights, FIRE calls on UO to eliminate or revise these requirements.

We appreciate your time and attention to our concerns. We respectfully request a response to this letter no later than August 24, 2022.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Terr', with a long horizontal flourish extending to the right.

Aaron Terr
Senior Program Officer, Campus Rights Advocacy

Cc: Patrick Phillips, Provost and Senior Vice President