



FIRE

Foundation for Individual
Rights and Expression

June 5, 2023

Thomas A. Parham
Office of the President
California State University, Dominguez Hills
1000 East Victoria Street
Welch Hall, Suite D-450
Carson, California 90747

Sent via U.S. Mail and Electronic Mail (president@csudh.edu)

Dear President Parham:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is concerned by the Proposed Policy on Diversity, Equity and Inclusion proffered by the College of Business and Public Policy at California State University, Dominguez Hills (CSUDH), in that, if adopted, aspects of the policy would violate faculty rights to academic freedom and freedom of conscience. Specifically, CSUDH proposes to require faculty's syllabi to include "evidence of equity-minded language" and that faculty "draw on gender, racial, and ethnic minority scholars' work as well as the lived experiences of Indigenous, and People of Color populations" in class discussions.² As a public institution bound by the First Amendment,³ CSUDH cannot penalize faculty for following the dictates of their own conscience, and must respect their academic freedom to decide what pedagogically relevant material to teach and how to teach it. The university therefore cannot require faculty to gear teaching toward a prescribed set of contested political ideals.

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 *Proposed Policy on Diversity, Equity and Inclusion*, CAL. STATE UNIV., DOMINGUEZ HILLS COLL. OF BUS. ADMIN. AND PUBLIC POLICY (on file with author) [hereinafter *Proposed policy*]. The recitation here reflects our understanding of the pertinent facts. We appreciate that you may have additional information to offer and invite you to share it with us.

³ It has long been settled law that the First Amendment binds public universities like CSUDH. *Healy v. James*, 408 U.S. 169, 180 (1972) ("[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, 'the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.'" (internal citation omitted)).

I. CSUDH’s Proposed Policy on Diversity, Equity and Inclusion Violates Faculty Freedom of Conscience

The proposed policy contains subjective criteria CSUDH can easily abuse to punish faculty with minority, dissenting, or even nuanced views on DEI-related issues that may be at odds with popular sentiment or evaluators’ views. While we do not expect such an outcome is intended, it is unfortunately easy to imagine occurring in practice.

To illustrate our concern by analogy, we trust CSUDH would readily recognize the problem with rewarding faculty members who demonstrate a commitment to promote “patriotism.” Just as with DEI, evaluating broad, subjective terms like patriotism requires an inherently political, viewpoint-dependent calculation. Without a careful, viewpoint-neutral specification of what these evaluative criteria mean in practice, faculty with personal or professional beliefs and commitments that differ from those of their peers or evaluators are at a high risk of penalty. This is an unacceptable result at a public institution of higher education. Faculty members must not face negative consequences for following the dictates of their own conscience in determining for themselves the pedagogically relevant material they aim to teach in their classes.⁴

Our nation is but a few generations removed from public university faculty being required to submit to state interrogation regarding their possible involvement with “subversive” organizations or to sign loyalty oaths disavowing socialism or communism as a condition of employment. Because of the bravery of faculty who challenged their constitutionality in federal courts, the Supreme Court made clear such requirements violate the First Amendment.⁵ We understand CSUDH has not required faculty to engage in specific actions in support of DEI as a condition of employment or promotion. But explicitly rewarding such participation—and penalizing its absence—is a worrying step similar to prior historical mistakes.

II. CSUDH’s Proposed Policy Violates the First Amendment’s Guarantee of Academic Freedom

FIRE is also concerned by the intrusion on academic freedom by the demand that faculty implement DEI-related language and examples into their courses and syllabi. Academic freedom is a close corollary to the First Amendment’s guarantee of free expression. In warning against “laws that cast a pall of orthodoxy over the classroom,” the Supreme Court called academic freedom “a special concern to the First Amendment” and cited its “transcendent value to all of us and not merely to the teachers concerned.”⁶

⁴ See, e.g., *Wooley v. Maynard*, 430 U.S. 705, 717 (1977) (“[W]here the State’s interest is 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.”); *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) (“If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.”).

⁵ See *Sweezy v. New Hampshire*, 354 U.S. 234 (1957); *Keyishian v. Bd. of Regents*, 385 U.S. 589 (1967).

⁶ *Keyishian*, 385 U.S. at 603.

We recognize the tension between a faculty member’s pedagogical decisions and the shared responsibility of an institution and its faculty to determine “who may teach, what may be taught, [and] how it shall be taught[.]”⁷ But we caution that this particular proposal violates faculty’s academic freedom by forcing them to alter their syllabi, teaching, research, and other academic activities to conform to administrators’ ideological beliefs.

All modern conceptions of academic freedom require affording faculty full freedom in the classroom to teach pedagogically relevant material, as well as substantial breathing room to determine what and how to teach or research. CSUDH’s proposed policy requires faculty to prioritize certain values and materials to receive a favorable review—values and materials they may not otherwise elect to use.

This concern is not abstract. FIRE’s case work provides ample evidence that employing subjective DEI standards to evaluate faculty can lead to academic freedom violations. Just a few months ago, for example, FIRE defended a professor at Hamline University who was non-renewed for displaying pedagogically relevant artwork depicting the Prophet Muhammad during an art history course.⁸ After a student complained the display was offensive, Hamline’s president and a DEI administrator issued a statement stating “respect for the observant Muslim students in that classroom should have superseded academic freedom.”⁹ Had the professor taught at CSUDH, subject to the proposed evaluative criteria, would she have faced negative professional consequences? Would her protected pedagogical choices have been insufficiently “inclusive” because she failed to “engage[] with the principles of diversity . . . in [her] curriculum”? Was the professor not being “equitable,” as she failed to “identify and eliminate barriers that have prevented the full participation of some groups”? If not, why not?

III. CSUDH Fails to Adequately Define Inherently Viewpoint-Based Terms

Within the proposed policy, CSUDH defines the terms “belonging,” “diversity,” “equity,” “inclusion,” “inclusive climate,” and “social justice” in impermissibly vague and subjective ways. It defines “belonging” as “a basic human need that is met by active acceptance and validation of a person’s lived experience, perspective, and ways of learning and understanding and includes a community of persons with shared social identities, supportive and challenging environments, and climates with high levels of encouragement.”¹⁰ This definition is impermissibly vague, as it is unclear how to promote belonging to “validat[e] . . . a person’s lived experience.” “Diversity” is similarly vague. It is defined as “presence, recognition and engagement of people of social, political and institutional identities from the wide range of human experiences, and the complex ways these identities intersect and are lived.”¹¹ It is

⁷ *Sweezy*, 354 U.S. at 263 (Frankfurter, J., concurring).

⁸ Sabrina Conza, *FIRE calls on Hamline University to reinstate art history instructor dismissed for showing medieval depiction of Muhammad*, FIRE (Dec. 27, 2022), <https://www.thefire.org/news/fire-calls-hamline-university-reinstate-art-history-instructor-dismissed-showing-medieval>.

⁹ *Id.*

¹⁰ *Proposed policy*, *supra* note 2.

¹¹ *Id.*

unclear what CSUDH considers engagement. For example, would a fascist, certainly a political minority, contribute to the diversity of the university?

The “equity” definition describes “a process of dismantling and creating structures and practices that have intentionally or unintentionally advantaged or disadvantaged groups of people; it is a process that responds to unjust structural outcomes to create laws, policies, practices and traditions that support just outcomes for all.”¹² The “structures” to which CSUDH refers as disadvantaging will naturally be different to different people. Similarly, “inclusion” is a “process and practice of active, intentional and sustained engagement of each person in an environment that values and respects their perspectives, multiple identities, experiences and contributions.”¹³ At FIRE, we have found that universities, even those committed to inclusion, often do not promote engaging students with disfavored political views, which often lead to criticism of the university.¹⁴

CSUDH says an “inclusive climate is evidenced by practices, policies and traditions that include diverse people and perspectives, that intricately considers those from historically and systemically oppressed, underrepresented and underserved populations for the purpose of social justice.”¹⁵ Who and what perspective is considered diverse and who is considered “historically and systemically oppressed, underrepresented and underserved” will differ based on one’s perspective and experience. And CSUDH’s definition of social justice—“the work to eliminate historic and systemic oppression and to build systems and cultures of human dignity where rights, accountability, equity, inclusion and access create conditions for people and groups to realize their full potential”—is subjective and vague.¹⁶ Different people with different perspectives and experiences will naturally view differently who is oppressed and what systems promote that oppression.

While these definitions may be useful to understand CSUDH’s *commitment* to these principles, they do not lend themselves to use with the proposed policy because, as *evaluation criteria* that could prompt adverse employment action, they do not sufficiently describe expectations for how faculty can meet the required diversity goals. These vague definitions necessarily signify different meanings and conceptual frameworks to different people—effectively leaving

¹² *Id.*

¹³ *Id.*

¹⁴ See Sabrina Conza, *No ‘dissidents’ allowed? Tulane investigating student after op-ed supporting Kanye West*, FIRE (Jan. 16, 2023), <https://www.thefire.org/news/no-dissidents-allowed-tulane-investigating-student-after-op-ed-supporting-kanye-west>; Sabrina Conza, *Viral video appears to show Trinity College singling out one student’s political dorm display for removal*, FIRE (Nov. 1, 2022), <https://www.thefire.org/news/viral-video-appears-show-trinity-college-singling-out-one-students-political-dorm-display>; Press Release, FIRE, *STICKER SHOCK: Emerson College doubles down on censorship, denies TPUSA chapter’s appeal of ‘bias’ charge for distributing stickers criticizing China’s government* (Nov. 16, 2021), <https://www.thefire.org/news/sticker-shock-emerson-college-doubles-down-censorship-denies-tpusa-chapters-appeal-bias-charge>. Each of these institutions purports a commitment to “inclusion.” See *Equity, Diversity & Inclusion*, TULANE UNIV., <https://tulane.edu/edi> [PERMA]; *Diversity, Equity, and Inclusion*, TRINITY COLL., <https://www.trincoll.edu/diversity-equity-inclusion> [PERMA]; *Diversity, Equity, and Inclusion*, EMERSON COLL., <https://emerson.edu/academics/schools-labs-and-centers/school-arts/diversity-equity-and-inclusion> [PERMA].

¹⁵ *Proposed policy, supra* note 2.

¹⁶ *Id.*

decisions regarding satisfaction of these criteria to the discretion of the evaluator, inviting subjective and arbitrary decision-making. Evaluators will all but inevitably abuse this discretion to punish views at odds with popular sentiment and/or of those tasked with evaluating a faculty member's commitment to DEI.

* * * *

We recognize CSUDH may shape and express its own aspirational values as an institution, including DEI. However, CSUDH may not violate faculty's freedom of conscience or academic freedom in the process, including by forcing them to promote or teach DEI in courses or to express ideological perspectives with which they disagree.

FIRE thus writes to ask that CSUDH consider the unintended consequences for faculty whose views, pedagogical choices, or associations are unpopular, or simply out-of-step with the majority on or off campus. To protect academic freedom and to honor the individuality of CSUDH's faculty, we urge you to reject this proposed policy.

We request a substantive response to this letter no later than close of business Monday, June 19, 2023, confirming CSUDH will reject the proposed policy and affirm to faculty that they maintain their First Amendment freedoms.

Sincerely,



Sabrina Conza
Program Officer, Campus Rights Advocacy

Cc: Joseph Wen, Dean, College of Business Administration and Public Policy