



October 27, 2021

President Robert A. Brown
Boston University
Office of the President
One Silber Way, Eighth Floor
Boston, Massachusetts 02215

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

Dear President Brown:

The Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

Since 1999, FIRE has routinely intervened when the expressive and academic freedom rights of faculty members nationwide have been threatened by institutional or outside actors, and we defend these rights without regard to the viewpoint or ideology at issue. We've previously, for example, defended an adjunct faculty member fired by his Iowa community college for identifying as "antifa" in an interview with a local television station,¹ a professor facing an investigation from his Arizona community college after his quiz questions concerning Islamic terrorism sparked social media criticism,² a faculty member suspended by his university for criticizing the idea of reparations and the perception of racism in the United States,³ and a professor whose university said it was "reviewing" her tweet sharply criticizing Rush

¹ Press Release, Found. for Individual Rights in Educ., *VICTORY: College settles with 'antifa' professor fired for criticizing President Trump on Facebook, avoids First Amendment lawsuit from FIRE* (Apr. 27, 2020), <https://www.thefire.org/victory-college-settles-with-antifa-professor-fired-for-criticizing-president-trump-on-facebook-avoids-first-amendment-lawsuit-from-fire>.

² Press Release, Found. for Individual Rights in Educ., *VICTORY: Chancellor affirms professor's academic freedom after Arizona college panicked over test questions about Islamic terrorism* (May 11, 2020), <https://www.thefire.org/victory-chancellor-affirms-professors-academic-freedom-after-arizona-college-panicked-over-test-questions-about-islamic-terrorism>.

³ Sabrina Conza, *FIRE calls on Saint Joseph's to reinstate and end investigation into professor for political tweets*, FIRE (Feb. 23, 2021), <https://www.thefire.org/fire-calls-on-saint-josephs-to-reinstate-and-end-investigation-into-professor-for-political-tweets>.

Limbaugh on the day he died.⁴ Our website, [thefire.org](https://www.thefire.org), contains additional examples of our nonpartisan commitment to faculty rights.

FIRE writes to Boston University (BU) today out of concern for academic freedom as it is implicated by new policy statements on diversity and antiracism—one in the School of Theatre (SOT), part of BU’s College of Fine Arts, and the other in the Boston Playwrights’ Theatre (BPT), part of BU’s English department in its College of Arts and Sciences. While there are numerous ways that academic units can promote such initiatives consistent with faculty members’ academic freedom, these new policy statements in multiple instances either compel particular speech from faculty, or they mandate that faculty demonstrate a commitment to concepts that are vaguely defined but often ideologically freighted. Further, it is FIRE’s understanding that when these concerns were brought to the BU administration’s attention, it responded that any professor concerned over potential violations to their rights should seek to remedy such issues through BU’s faculty grievance process. Given the policies’ problematic requirements, FIRE believes this is an insufficient response—one which unduly burdens faculty whose expression is chilled or whose freedom of conscience is violated by these new policy statements. We ask that BU work proactively with SOT and BPT to reform these policies to make them consistent with BU’s academic freedom promises.

FIRE calls attention to language in two published statements. The first is a statement of commitments attributed to the SOT faculty and staff (“SOT Statement”) issued in response to a series of demands for reforms from a large contingent of SOT students and alumni calling themselves the School of Theatre Anti-Racism Student Initiative (SARSI). Both SARSI’s petition and the SOT response are linked in a July 25, 2020, article in BU’s student newspaper, *The Daily Free Press*.⁵ The second statement is a “Commitment to Anti-Racism” publicly available on the website of the Boston Playwrights Theatre (BPT), the residential producing theatre of BU’s Master in Fine Arts program in playwriting (“BPT Statement”).⁶ As written, these statements contain multiple violations of BU’s academic freedom policies, which BU is legally and morally bound to uphold.

I. SOT and BPT Issue Statements on Diversity and Antiracism and Commit to Numerous Reforms

⁴ Aaron Terr, *FIRE warns UAB not to punish professor over tweet about Rush Limbaugh’s death*, FIRE (Feb. 23, 2021), <https://www.thefire.org/fire-warns-uab-not-to-punish-professor-over-tweet-about-rush-limbaughs-death>.

⁵ Allison Pirog, *Schools within CFA make demands for racial equity*, THE DAILY FREE PRESS, July 25, 2020, <https://dailyfreepress.com/2020/07/25/schools-within-cfa-make-demands-for-racial-equity>. The statement, linked in the *Daily Free Press* article, can be found at <https://drive.google.com/file/d/1SYpy6XU542xRtGslvj77kLbI11OVt4r/view> (last visited Oct. 25, 2021).

⁶ Boston Playwrights’ Theatre, *Commitment to Antiracism*, <https://www.bu.edu/bpt/about/bpts-commitment-to-anti-racism> (last updated Nov. 10, 2020).

The SOT Statement contains 18 distinct commitments regarding various aspects of SOT's programming, several of which implicate academic freedom and free expression. The fifth commitment, for instance, states:

All teachers in SOT (Faculty, Staff and graduate students) will include a [Diversity, Equity, & Inclusion] statement in their Syllabus, a DE&I personal statement of teaching purpose in their annual report and their teaching file outlining their commitment to DE&I and the demonstrated way this was included in their classroom teaching, by play/project selection, guest artist invitation, co-curricular activities or experiences.

The fifteenth commitment states that “[t]here will be a land acknowledgement recognizing Indigenous sovereignty in the pre-show announcement for every show.”

In addition to commitments that compel speech, faculty and production teams would be required to implement specific “anti-racist” reforms and practices. The thirteenth commitment holds that “[a]ll Teachers in SOT ... will undergo a Curriculum Reform process beginning in the Fall of 2020 to address the current state of the Curriculum and transform it through an anti-racist lens.” It additionally states: “We will ‘prioritize the evaluation and revision of all our curricula and policies, and examine our pedagogical approach to theatre training through an anti-oppression and anti-racist lens’ by examining each class and each program for content, focus, function, and purpose.” The fourteenth commitment, meanwhile, states that “[p]roduction teams will be required to employ anti-racist and anti-colonial practices to ensure they and the ensemble are not perpetuating harm against any individual or community[.]”

The BPT Statement contains a number of similar provisions governing speech and pedagogy. First, the BPT Statement mandates statements on the sovereignty of indigenous peoples and an attestation regarding their lands. Specifically, the BPT commits, at the first rehearsal for each production and in the pre-show announcements for every performance, to reading this statement:

We acknowledge the Indigenous Peoples as the traditional stewards of the land where this performance is taking place and the enduring relationship that exists between them and their tribal territories. The land that we are performing on today is the traditional unceded territory of the Massachusetts Tribal Nation.⁷

The BPT Statement also commits faculty to reframe certain source material in their teaching, stating, “When teaching material or scholarship that emerges from a White or Eurocentric

⁷ *Id.*

lineage, we will contextualize this work through an actively antiracist lens. We commit to seek training for our faculty and our graduate students in this regard.”⁸

The BU Faculty Council’s Academic Freedom Committee reviewed both the SOT and BPT Statements at the direction of the BU Faculty Council’s chair. The Academic Freedom Committee cited all the above-discussed provisions of the two statements as constituting clear violations of BU’s Academic Freedom Policy, and raised concerns about numerous other provisions not discussed in this letter. The Academic Freedom Committee’s detailed feedback was then provided to the office of BU’s Provost. The BU administration did not respond substantively to or act on the committee’s concerns and recommendations.⁹ Rather, it has informed the BU Faculty Council Chair that individual faculty members with concerns about the statements should redress them through BU’s grievance process.

II. The SOT and BPT Statements Endanger Faculty Members’ Academic Freedom

The policy requirements we highlight in this letter are problematic in light of BU’s strong stated commitments to free speech and academic freedom. BU’s academic freedom statement, for instance, admirably states:

Academic freedom is essential in institutions of higher education if they are to make their proper contribution to the common good. The common good depends upon the free search for truth and its free exposition. It is that which justifies academic freedom, not the interest of the individual faculty member or even the interest of a particular university.

Academic freedom is the freedom to engage in research, scholarship, or other creative work in order to expand knowledge, to publish research findings, to teach and to learn in an atmosphere of unfettered free inquiry and exposition.¹⁰

Furthermore, in October 2020, BU’s Board of Trustees ratified the institution’s “Statement on Free Speech and Expression.”¹¹ That statement opens:

Freedom of speech and expression are central to the mission of Boston University. The University has a responsibility to allow and safeguard the airing of the full spectrum of opinions on its

⁸ *Id.*

⁹ One exception to this is that the administration effected a change in the BPT Statement wherein a commitment to assigning “50% diverse-identifying and marginalized writers in assigned texts” was changed to include “a significant representation” of such writers.

¹⁰ *Faculty Handbook, Academic Freedom*, BOSTON UNIV. <https://www.bu.edu/handbook/ethics/academic-freedom> (adopted Apr. 18, 2007).

¹¹ *Statement on Free Speech and Expression*, BOSTON UNIV. (ratified Oct. 27, 2020), <https://www.bu.edu/freespeechcommittees/statement>.

campuses and to create an environment where ideas can be freely expressed and challenged. Boston University is committed to the academic freedom of its faculty as articulated in the Faculty Handbook and to preparing students to engage thoughtfully, openly, and effectively in disagreement and debate.¹²

Importantly, the Statement on Free Speech and Expression explicitly states that its commitment to free expression is fully consistent with its commitment to diversity—a welcome rejection of the argument that these ideals must live in tension with each other. As the Statement on Free Speech and Expression provides (emphasis added):

The University is committed to creating and maintaining a community that invites the full participation of all people and the expression of all viewpoints. The University believes that freedom of speech and expression are essential to, and compatible with, the principles articulated in Boston University’s Statement on Diversity. **The University embraces the guiding principle that the remedy for speech that some may find hurtful, offensive, or even hateful is not suppression of speech, but more speech.**¹³

While BU is a private institution and thus not legally bound by the First Amendment, it has nonetheless promised its students and faculty expressive rights on par with the rights they would enjoy at public institutions. These firm commitments to uphold faculty members’ expressive rights represent not only a moral obligation but a contractually binding legal duty on the part of the college.¹⁴

The statements highlighted in this letter violate BU’s academic freedom obligations in multiple ways. Compelled speech—such as the diversity statement requirements and land acknowledgement statement—is incompatible with BU’s promises of academic freedom and free inquiry. Further, while stated commitments to an “anti-racist” teaching philosophy and “anti-colonial” rehearsal practices for the purpose of not “perpetuating harm” may work as aspirational goals or guidelines, BU’s guarantees of academic freedom preclude it from compelling faculty to incorporate what may amount to overtly ideological viewpoints or practices into their teaching.

To the extent terms such as “anti-racist” and “anti-colonial” are left vague and undefined, and therefore open to interpretation and dispute, their vagueness is itself problematic. Faculty

¹² *Id.*

¹³ *Id.*

¹⁴ See *Mayberry v. Dees*, 663 F.2d 502, 520 (4th Cir. 1981) (treating faculty manual as contract between professor and university); see also *McAdams v. Marquette Univ.*, 2018 WI 88 (2018) (private university breached its contract with a professor over a personal blog post because, by virtue of its adoption of the 1940 AAUP Statement of Principles on Academic Freedom and Tenure, the post was “a contractually-disqualified basis for discipline”).

may have different ideas and visions for how to define such concepts and whether or how these concepts might be embodied in their work. Without agreed-upon, objective, and precise definitions, decisions regarding the satisfaction of these criteria will be left to the discretion of the evaluator, thus inviting subjective and arbitrary decision-making. This discretion will all but inevitably be abused to punish views at odds with popular sentiment or the sentiments of those tasked with evaluating a faculty member's commitment in these areas. This is a far cry from BU's promise that faculty have the academic freedom right "to engage in research, scholarship, or other creative work in order to expand knowledge, to publish research findings, to teach and to learn in an atmosphere of unfettered free inquiry and exposition."

To further illustrate our concerns by analogy, we trust that BU would readily recognize the problem with requiring faculty to affirm and infuse their pedagogy with "patriotism." Just as with terms like "anti-racism" and "diversity, equity, and inclusion," evaluating broad, subjective terms like "patriotism" requires an inherently political, viewpoint-dependent calculation. Faculty whose personal or professional beliefs and commitments differ from those of the university must not face negative consequences for following their considered scholarly views or the dictates of their own conscience.

III. **BU Must Reform the Policies Without Requiring Faculty Members to File Grievances**

Various parts of the policy statements discussed in this letter clearly contradict BU's strong promises of free expression and academic freedom, and those violations should not have to be remedied by faculty members through the grievance process. Once made aware that a department or program imposes requirements that, on their face, violate professors' academic freedom rights, BU has an obligation to proactively work with the program to revise its policies accordingly.

Furthermore, it is far from clear how effective BU's grievance procedure would be in addressing the concerns in this letter. A panel of grievance committee members may decide at the outset that such a complaint does not merit further investigation, at which point the matter is considered closed. If the panel decides further investigation is warranted, it may attempt to broker a compromise between the involved parties, or, if it is unable to do so, make recommendations to BU's provost or president. BU's provost or president, in turn, may act on the grievance committee's recommendations, or provide a written explanation of why they decline to do so. The various steps of the process, from start to finish, can take as long as 120 days, and this timetable could be extended if grievances are not resolved in the course of the academic year, or if enough faculty cannot expeditiously be assembled to form a committee to hear the grievance.¹⁵ Such a long timetable is unacceptable especially considering that faculty speech is chilled every day these illiberal requirements remain effective policy.

¹⁵ *BU Faculty Handbook, Grievance Procedure*, BOSTON UNIV. (revised June 11, 2019), <https://www.bu.edu/handbook/human-resources/grievance-procedure>.

While BU's grievance procedure may be well-equipped to mediate complaints rising out of unique, individualized circumstances not easily accounted for elsewhere in BU's policies—in other words, individual *applications* of the policies—the procedure is ill-equipped to referee concerns regarding standing policies that impact the academic freedom of a broad swath of faculty. Its opinions are ultimately advisory, and the length of the process means professors worried that standing departmental policies violate their academic freedom must suffer under them for long periods. It is unacceptable for BU to rely on the grievance procedure in this regard, and it should not be incumbent on individual faculty members to attempt to vindicate their rights through this uncertain process for there to be any chance of reform.

FIRE recognizes that within institutions, departments and programs enjoy their own academic freedom rights to, for instance, emphasize certain areas of study and prioritize certain approaches over others, and to update and reorient their direction. When a program's implementation of its academic mission goes so far as to contradict and weaken the institution's promises of academic freedom, however, correction on the part of the institution is warranted.

To be clear, FIRE does not believe that any of the particular examples we've described jeopardize academic freedom when undertaken by a given faculty member acting *voluntarily* in relation to their *own* scholarship, teaching, or creative work. If a professor feels his or her syllabus is an appropriate place to include a diversity statement, they should be free to do so. If they believe a production is well served by inclusion of a land acknowledgement statement before performances, they should be free to include it. If they want to take an antiracist approach—however they conceptualize it—to teaching certain source material, they should be free to do so. FIRE would just as strongly object to professors being *prohibited* from doing these things as we do to professors being *required* to do them.

There are numerous ways BU can emphasize its commitment to diversity and inclusion in a manner consistent with its academic freedom and free expression promises. It must not stand by, however, while its institutional promises of academic freedom are undercut in ways that create a class of faculty with fewer rights than are enjoyed by their peers. To that end, we ask that BU work with SOT and BPT to reform their policies to make clear that they will not compel individual faculty members to affirm certain beliefs, or to alter their teaching in violation of their academic freedom rights, while preserving their right to do so voluntarily.

We appreciate your attention to these concerns, and respectfully ask for a response to this letter by November 17, 2021.

Sincerely,



Peter Bonilla

Vice President of Programs

Cc: Jean Morrison, University Provost and Chief Academic Officer