



FIRE

Foundation for Individual
Rights and Expression

August 3, 2023

Ryan E. Ferch
Office of the President
University of Massachusetts, Boston
1 Beacon Street, 31st Floor
Boston, Massachusetts 02108

Sent via U.S. Mail and Electronic Mail (RFerch@umassp.edu)

Dear Mr. Ferch:

FIRE appreciates your July 28 response to our enclosed June 26 letter of concern regarding UMass Boston requiring some faculty applicants to demonstrate commitment to DEI-related ideologies in violation of its First Amendment duty to adhere to viewpoint-neutral hiring practices. However, we are disappointed by your failure to acknowledge that some UMass Boston faculty applications had these requirements and the absence of any explicit confirmation that the university will not include such requirements in applications moving forward.

Specifically, you state that UMass Boston “will continue to support our faculty’s Constitutional rights,”¹ implying that it did not engage in any impropriety—even though requiring DEI commitments plainly encroaches on faculty constitutional rights to not have to espouse state-prescribed views. Your response also fails to address whether UMass Boston will eliminate these unlawful, ideological litmus tests, which risk casting a pall of orthodoxy over faculty applicants whose views, pedagogical choices, or associations are unpopular or out of step with the university or its surrounding community.

We again call on UMass Boston to honor faculty members’ expressive rights—and to meet its binding legal obligations²—by clarifying that it will remove any requirement forcing faculty to pledge allegiance to a particular ideology as a pre-condition of employment. We request a substantive response to this letter by August 17, 2023.

¹ Letter from Ryan E. Ferch, Associate Counsel, to Haley Gluhanich, Program Officer, (July 28, 2023) (on file with author).

² Recall that the First Amendment binds public universities like UMass Boston. *Healy v. James*, 408 U.S. 169, 180 (1972).

Sincerely,

A handwritten signature in black ink, appearing to read "Haley Gluhanich". The signature is written in a cursive, flowing style.

Haley Gluhanich

Program Officer, Campus Rights Advocacy

Cc: Marcelo Suárez-Orozco, Chancellor
Joseph B. Berger, Provost and Vice Chancellor for Academic Affairs

Encl.



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Rights and Expression

June 26, 2023

Marcelo Suárez-Orozco
Office of the Chancellor
University of Massachusetts Boston
100 Morrissey Boulevard
Boston, Massachusetts 02125-3393

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

Dear Chancellor Suárez-Orozco:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is concerned that the University of Massachusetts Boston is requiring some faculty applicants to demonstrate commitment to diversity, equity, and inclusion (DEI).² UMass Boston can certainly prioritize diversity initiatives, but as a public institution bound by the First Amendment,³ it must uphold the freedom of expression and academic freedom of its faculty, including by making hiring decisions in a viewpoint-neutral

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. The recitation of facts here reflects our review of publicly posted information at UMass Boston's website as noted below. If you may have additional information that should factor into our analysis, we invite you to share it with us.

² For example, one faculty application requires "a diversity statement that reflects experience and commitment to diversity, equity, and inclusion." *Human Resources Employment Opportunities*, Assistant Professor (Computer Science), UNIV. OF MASS. BOSTON, <https://employmentopportunities.umb.edu/boston/en-us/job/516532/assistant-professor-computer-science> [<https://perma.cc/JUW6-M7MY>]. Another application requires applicants to have "experience working with diverse faculty, staff, and students and be committed to support our goal of ensuring an inclusive, equitable, and diverse workplace and educational environment." *Human Resources Employment Opportunities*, Lecturer A, UNIV. OF MASS. BOSTON, <https://employmentopportunities.umb.edu/boston/en-us/job/517754/lecturer-a> [<https://perma.cc/2JT5-MP6G>].

³ It has long been settled law that the First Amendment binds public universities like UMass Boston. *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).

manner.⁴ UMass Boston accordingly cannot reject or penalize applicants because of their failure to profess allegiance to any particular political or ideological position.

Universities succeed in their unique role as “peculiarly the ‘marketplace of ideas’”⁵ only by engaging in the objective search for knowledge unburdened by undue pressures. The DEI requirements for faculty applicants encroach on faculty’s First Amendment right not to adopt prescribed views. Their subjective criteria could easily also be abused to penalize applicants with minority, dissenting, or even simply nuanced views on DEI-related issues that may not dovetail perfectly with the university’s goals. Such an outcome would lead toward the university becoming an echo chamber for its preferred views.

To illustrate our concern by analogy, we trust UMass Boston would readily recognize the problem with requiring faculty applicants to demonstrate a commitment to “patriotism.” 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 applicants with personal or professional beliefs and commitments that differ from those of the university are at significant risk of penalty. This is an unacceptable result as a public institution of higher education. Faculty applicants must not face negative consequences for following the dictates of their own conscience in determining for themselves what to believe and to what viewpoint(s) they subscribe.

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.⁶ While UMass Boston is not requiring faculty applicants to engage in specific actions in support of DEI as a condition of employment, it explicitly rewards such participation and seemingly penalizes its absence—a worrying step similar to prior historical mistakes.

FIRE also has serious concerns about the vagueness of the DEI requirements and the potential that the university will use them to penalize faculty applicants that demonstrate insufficient commitment to its views on DEI. The applications containing the DEI requirements lack definitions for concepts like “diversity,” “equity,” and “inclusion.” In the absence of agreed-upon, objective, and precise definitions, these terms—which carry salient political connotations subject to much debate⁷—will almost certainly serve as proxies for particular

⁴ *Wooley v. Maryland*, 430 U.S. 705, 717 (1977) (holding that when government institutions 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.”); 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”).

⁵ *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967).

⁶ See *Sweezy v. New Hampshire*, 354 U.S. 234 (1957); see also *Keyishian*, 385 U.S. 589.

⁷ The concept of “equity,” for example, is a subject of significant debate in higher education. See, e.g., Todd Zakrajsek, *Do we need equity or equality to make things ‘fair’? Actually we need both*, TIMES HIGHER EDUC.

viewpoints or beliefs. Without further definition, these terms will signify different meanings and conceptual frameworks to different people, effectively leaving decisions regarding satisfaction of the DEI requirements to the discretion of the evaluator and thus inviting subjective and arbitrary decision making.

For example, UMass Boston may find a faculty applicant for the Computer Science Department insufficiently committed to DEI because she believes social justice and gender inclusivity have no place in a coding course. Likewise, a fascist faculty applicant—certainly a political minority—might argue his political ideology contributes to the goal of “ensuring an inclusive . . . and diverse workplace . . . environment.” Evaluators will all but inevitably abuse discretion to punish views at odds with popular sentiment and/or of those tasked with evaluating the faculty applicant’s commitment to DEI.

We recognize UMass Boston may shape and express its own aspirational values as an institution, including DEI. But it may not violate faculty applicants’ freedom of conscience in the process, including by forcing them to express ideological perspectives with which they disagree.

FIRE thus writes to ask that UMass Boston consider the unintended consequences for faculty applicants whose views, pedagogical choices, or associations are unpopular, or simply out of step with the majority on or off campus. To honor faculty members’ individuality and expressive rights, FIRE calls on UMass Boston to eliminate DEI commitment requirements from faculty applications. We respectfully request a substantive response to this letter no later than close of business on July 10, 2023.

Sincerely,



Haley Gluhanich
Program Officer, Campus Rights Advocacy

Cc: Joseph B. Berger, Provost and Vice Chancellor for Academic Affairs

(Sept. 25, 2022), <https://www.timeshighereducation.com/campus/do-we-need-equity-or-equality-make-things-fair-actually-we-need-both> (arguing for the application of universal design to teaching because equity “in higher education is exceedingly important, but without equality many faculty and students will probably persist with the belief that it’s unfair to give some students additional time on exams or allow them to videotape a presentation instead of delivering it live”); Steven Mintz, *How to Stand Up for Equity in Higher Education*, INSIDE HIGHER ED (Apr. 20, 2022), <https://www.insidehighered.com/blogs/higher-ed-gamma/how-stand-equity-higher-education> (arguing 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”); 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 “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.”).