



Critical brief on SEA 202

University Alliance for Racial Justice August 12, 2024



The Purpose of this Brief: Understanding the Impact of SEA 202

On July 1st, a new law impacting higher education took effect in the state of Indiana, known as SEA 202. You can (and should) read the law for yourself. Here is a link:

<https://legiscan.com/IN/text/SB0202/id/2946990>

SEA 202 is part of a larger culture war in the United States, stemming from this country's history of white supremacy. Other states, including Florida, Texas, Missouri, and Utah have passed similar laws with devastating effects. Faculty and DEI staff are losing their jobs. In some cases, whole offices and departments are being eliminated. This law is designed to provoke fear and confusion and to encourage faculty and staff to censor themselves.

The University Alliance for Racial Justice (UARJ) has compiled this list of FAQs to encourage all members of the Indiana University community to continue teaching, mentoring, publishing, exhibiting, and performing. The bottom line: **Do not censor yourself or your colleagues.** Defending our institution requires that we stand up for the basic principles of academic freedom and honoring diversity. The purpose of this brief is to provide information and strategies that enable us to do so.

Questions about the intent of SEA 202

I've heard that SEA 202 is about intellectual diversity, not DEI. Is that true?

No. The term 'intellectual diversity' was not developed to encourage greater freedom of speech. It was [coined by hyper-conservative scholar](#), David Horowitz, as a rhetorical device for attacking the civil rights movement and liberals by co-opting their own language. Stanley Fish has called the political usage of the term intellectual diversity a '[Trojan horse of a dark](#)



[design](#).' The [Chronicle of Higher Education](#) has identified SEA 202 as one of a number of bills in 28 states authored by national conservative think tanks that are attempting to limit or prevent instruction and programs that address diversity, equity and inclusion on college campuses. Despite claims from the law's supporters that the law is strengthening free speech protections for faculty members, SEA 202 is actually doing the opposite.

Isn't SEA 202 addressing a real problem of bias against conservative speech on college campuses?

Not according to available evidence. The most recent survey of all Indiana undergraduates from the [Indiana Commission for Higher Education](#) (ICHE), released in 2023, reported that 75% of all respondents believe that free speech is highly supported on their campus, and that the protections of free speech extended to virtually all groups, regardless of racial category, religious affiliation, gender, or political affiliation. The only group identified by less than a majority as having their speech adequately protected was Native Americans.

What possible disciplinary actions are listed in SEA 202 for a faculty or staff member who is found to be in violation?

If found guilty of violating the law's definition of 'intellectual diversity,' possible consequences include termination, demotion, salary reduction or 'other disciplinary action as determined by the institution.' Indiana University has not yet specified what the consequences will be for any minor or major violations or what 'other disciplinary action' might entail. The draconian nature of these potential sanctions for instructors' speech strongly indicates that the intent of 202 is to encourage faculty to self-censor in order to avoid drastic outcomes.



What will be the likely impact of SEA 202 on tenure and promotion at Indiana University?

The five-year review process mandated by the law is modeled after a similar bill in Florida (FL SB 266), and requires all faculty, both tenured and non-tenured, to undergo reviews every five years. These reviews must consider whether the individual helped to ‘foster a culture of free inquiry, free expression and intellectual diversity within the institution’ and ‘any other criteria established by the board of trustees.’

The University’s FAQ’s do not define what the new five-year review process will look like at Indiana University, but outcomes at other public universities give cause for grave concern. On August 7th, an article in [Inside Higher Ed](#) reported that in the first round of post-tenure reviews at the University of Florida (which served as the model for the five-year reviews contained in SEA 202), roughly one-fifth of the professors ‘were either found lacking, decided to leave, or chose to give up research—and likely their tenure with it.’

Does the law specifically target diversity, equity and inclusion?

Yes. SEA 202 contains a number of provisions that, like anti-DEI legislation in other states, specifically target diversity, equity and inclusion. It prohibits hiring or promotion committees from considering pledges or statements of support for certain types of diversity, equity, or inclusion activities unless the statement is required by federal law.¹ In addition, SEA 202 requires universities to submit all definitions, guidelines and parameters describing diversity, equity, and inclusion initiatives and budgets used to pay for them. Such data have recently

¹ These provisions of the law regarding diversity statements are confusing, but appear to allow consideration of such statements unless they represent ‘pledges of allegiance to or statements of personal support for any (1) policy or action that would treat similarly situated people or groups of people differently based on the race, color, national origin, sex, sexual orientation, or religion; or (2) political or ideological movement.’



been used in [Florida](#), [Texas](#), [Utah](#) and [Missouri](#) to identify and fire current and even former DEI staff and end all DEI initiatives and programs.

Is SEA 202 discriminatory?

Clearly. Research has shown that faculty of color are significantly [more likely to receive complaints from students](#), especially when they speak about race and racism. During the bill's consideration by the General Assembly and the Governor, a coalition of [civil rights leaders](#) and educational organizations throughout the state of Indiana banded together to call out the bill as [discriminatory against faculty of color](#) and other marginalized faculty.² Similar bills in Florida are leading to a massive out-migration of faculty, [especially faculty of color](#) and marginalized faculty, from Florida universities.

Does IU's current implementation of SEA 202 provide any guardrails or protections from the harmful effects of the law?

No, IU's interim policy as described in the University [FAQs](#) is a legalistic interpretation that provides no protections for faculty beyond those listed in the law itself.³ Indeed, in several respects IU's interim policy goes farther than SEA 202 requires. While established policy under ACA-33 requires a number of due process protections and does not provide for anonymous complaints, IU's interim policy allows for anonymous complaints. Of even greater concern is the fact that SEA 202 complaints will be tracked using *EthicsPoint*, commercial software used by institutions to investigate '[fraud, abuse, and other misconduct or illegal activity](#).' One can only wonder why the IU administration would choose an investigation process that transforms a term invented to disrupt civil rights enforcement into a driver for investigating accusations of purported fraud, abuse and illegal activity.

² Said Sadie Harper-Scott, president of the Indiana State Conference of the NAACP, 'Our leaders don't seem to recognize how SB 202 turns Indiana back towards its deeply racist past ... but the citizens of Indiana certainly do.'

³ See [Grammarist](#) discussion of the idiom, 'fox guarding the henhouse.'



Advice for faculty and DEI staff

What if I'm an adjunct or a graduate instructor? Does SEA 202 apply?

Yes! The law applies to everyone with instructional responsibilities at a public institution of higher education in the state of Indiana. It also applies to staff who engage in DEI work. It doesn't matter if you teach full-time or part-time. It doesn't matter if you have tenure or not.

Should I stop teaching and publishing about DEI topics like racism, sexism, xenophobia, and homophobia? What about antisemitism and Islamophobia?

No! The law itself states that it 'may not be construed' to 'limit or restrict the academic freedom of faculty members or prevent faculty members from teaching, researching, or writing publications about diversity, equity, and inclusion or other topics.' Do not give up your freedoms voluntarily.

Should I stop teaching about public policy? What about related topics like climate change that some people find controversial?

SEA 202 requires faculty members to 'foster a culture of free inquiry, free expression, and intellectual diversity.' It also defines 'intellectual diversity' as 'multiple, divergent, and varied scholarly perspectives on an extensive range of public policy issues.' Reading these two parts of the law together, it is clear that instructors are being encouraged (perhaps even required) to teach about public policy.

Who decides what is relevant to teaching within my discipline?

SEA 202 discourages instructors from teaching content that is outside of their discipline. It is important to insist that faculty are the subject matter experts—not the administration or the legislature. We are the ones who determine what is within our disciplines or not. We are the experts on what range of scholarship exists (or doesn't exist) within our fields.



What should I tell students about SEA 202?

IU is required to inform students about SEA 202. At the same time, it is your right, under the First Amendment, to express your opinions. To balance these rights, instructors might choose to tell their class: 'Under SEA 202, you have a right, as you have always had, to file a complaint about my teaching. I support you in exercising that right if you feel it is necessary. You will also have the opportunity to comment on my instruction in end-of- semester evaluations, as you always have. At the same time, I believe that SEA 202 is an unfair and unjust intrusion by the legislature on Indiana's institutions of higher education. It is part of a nationwide attack to limit diversity, equity and inclusion on college campuses. I am not alone in protesting this law and will continue to do so.'

What should I do if I am informed that an SEA 202 complaint has been filed against me?

ACA-33 (Academic Appointee Responsibilities and Conduct) gives you due process rights. You have the right to receive a written copy of the complaint and to know the identity of your accuser. You have the right to a hearing from the Faculty Board of Review before any severe sanctions (e.g, termination, demotion, salary reduction) are imposed. You have the right to see any evidence, to provide evidence, and to get support from an advocate or lawyer. You are not required to be silent. Join a group like UARJ or AAUP for support, ideally before you need help.

Is there anything I can do to protect myself in the classroom?

Indiana is a 'one party consent' state, which means that you can record a lecture without permission from the audience. Kaltura is installed in classrooms that have built-in technology. The IU Knowledge Base can help you figure out how to use it. If you are teaching online, consider recording everything on Zoom. Another option is to use a



smartphone or laptop as a recording device. Such recordings can provide relevant information in case of student complaints and can even be used as evidence in court.

Are there questions I should be asking of my department chair, the dean, or the administration?

There will be many meetings in the coming weeks about the university's plans, as yet still relatively undefined, for implementing SEA 202. Many questions have not yet been answered and could be asked whenever the topic of 202 comes up, including:

- *I understand that over 120 questions about SEA 202 were submitted through the [FAQ portal](#). When can we expect that those questions will be answered?*
- *Will the BFC, as part of shared governance, have a real voice in assessing and amending the interim SEA 202 implementation policy?*
- *Why is the university choosing to use EthicsPoint, commercial software used for tracking fraud, abuse, and illegal behavior, for investigating 202 complaints?*
- *Why does the interim implementation policy allow 202 complaints to be anonymous when current university policy (ACA-33) states that faculty subject to serious complaints have the right to know the identity of their accuser?*
- *How will the administration track complaints to know whether faculty of color or other marginalized faculty are being disproportionately targeted? What will be done if evidence of such disparity is found?*
- *Are there any plans to begin firing DEI employees or shutting DEI programs at IU? How will the administration respond if the legislature demands such actions?*
- *What will we do as departments when it becomes clear that we cannot get highly qualified candidates, especially candidates of color, to come to IU under this law and this particular policy interpretation?*



What can I do to push back on this law and its implementation?

As an individual, you can post on social media, write editorials, give public testimony, and join others in protesting this legislation and the administration's implementation of the law.

SEA 202 states that faculty may not be punished for:

- 1) Expressing dissent or engaging in research or public commentary on subjects,
- 2) Criticizing the institution's leadership, or
- 3) Engaging in any political activity conducted outside the faculty member's teaching duties at the institution.

It is important to understand that you can and should defend your First Amendment rights. The Ball State AAUP, for example, in cooperation with the national ACLU, developed an online reporting system that allows faculty to report if any administrator advises them to proactively limit their teaching or writing.

The University Alliance for Racial Justice and other campus organizations have been fighting against SEA 202 since its introduction in the General Assembly in early 2024. We welcome your participation in these continuing efforts.

Conclusion

When facing legislation designed to chill freedom of expression in K-12 and higher education, it is essential not to engage in [anticipatory obedience](#), doing more than the law requires.

Whatever your role at Indiana University—adjunct professor, research scientist, dean, teaching professor, graduate instructor, academic specialist, or assistant, associate or full professor—we encourage you to decide now: **I am not censoring myself**. The law itself states that SEA 202 does not 'limit or restrict the academic freedom of faculty members or prevent



faculty members from teaching, researching, or writing publications about diversity, equity, and inclusion or other topics.' Exercise that freedom.

Working at a university in the state of Indiana does not cancel your rights as a citizen. Our duty as educators is to present the truth as it exists in our disciplines. When the institution of tenure was brought to the United States in the 1940s, it was to [guard against purges of faculty](#), such as those that occurred in Nazi Germany, for political or ideological reasons. To resist such outcomes, we must defend the rights of all instructors to teach and publish the truth and to determine what is relevant in our own classrooms, free of political control by the administration and state legislature.

When faced with the end of tenure as we know it, or the possibility that IU might join other institutions in firing all its diversity, equity and inclusion staff, it is natural to feel that 'it can't happen here.' Unfortunately, we have learned through hard experience—the suspension of a colleague of color for failing to fill out the right paperwork, a 93% vote of no confidence being ignored by the administration and Board of Trustees, arrests in a free expression zone and a sniper on the IMU roof—that it *can* happen here. The only way to ensure that it can't happen here is to decide that we will not let it happen here, and act accordingly. As citizens of this academic community, it is our job to preserve and protect the values and principles of our university, and to work together in this critical moment to preserve academic freedom, human dignity, and diversity.