



MEMORANDUM

To: Boise State University, Lewis-Clark State College, Idaho State University, University of Idaho, College of Eastern Idaho, College of Southern Idaho, College of Western Idaho, and North Idaho College

From: Office of the Idaho State Board of Education (OSBE)

Date: May 16, 2025

Re: Interim OSBE Process Related to Academic Programs for Idaho Code § 67-5909D

The “Freedom of Inquiry in Higher Education” law, or [SB1198](#) (2025), takes effect on July 1, 2025, codified as Idaho Code § 67-5909D. The law prohibits state higher education institutions (including four-year institutions, community colleges, career technical schools and private universities/colleges that receive state-appropriated funding) from engaging in certain “diversity, equity, and inclusion” activities. The law may require organizational changes and adjustments to campus services. It may also impact certain academic programs on campus. However, the law also recognizes protections for academic freedom in research, creative works and teaching, and the “free discussion of ideas in a classroom setting.”

Due to the effective date of the law, this memorandum prioritizes curricular impacts to summer and fall session(s). Necessary policy revisions will be considered by the Idaho State Board of Education (Board) in accordance with existing Board policies. This memorandum will be considered by the Board and may be revised or updated as directed or otherwise deemed necessary.

1. COMMITMENT TO ACADEMIC FREEDOM AND FREE EXPRESSION

This memorandum is informed by the Board's stated commitment to free expression, academic freedom and academic responsibility expressed in existing Board policies and resolutions which are based on the United States Constitution, the Idaho Constitution, Idaho statutes and existing caselaw.

As Board Policy III.B Academic Freedom and Academic Responsibility states, in part:

- "Students may not be directed or otherwise compelled to personally affirm, adopt or adhere to any particular political, religious or philosophical tenets or ideology."
- "Students also agree to acknowledge that faculty may expose students to a broad range of diverse perspectives, and to foster and defend intellectual honesty, freedom of inquiry and instruction, and free expression on and off campus."
- "Faculty may not refuse to enroll or teach a student because of the student's beliefs, interpretations, or applications of knowledge."
- "Faculty have the responsibility to facilitate pluralistic learning and work environments, but shall not require others to make personal or political choices against their beliefs or values."

The Idaho State Board of Education Resolution on Freedom of Expression in Higher Education (adopted December 18, 2024) states that institutions must take action to:

- "Protect a speaker's right to free expression, including controversial, unpopular, or offensive expression. This includes prohibiting individuals or groups from substantially disrupting others' protected expression. Institutions have a solemn responsibility not only to promote the freedom to debate and scrutinize all ideas in appropriate forums but also to protect that freedom when others attempt to restrict it."
- "Protect and cultivate academic freedom and academic responsibility. Faculty must be free to investigate, research, discuss, publish, and teach within their academic expertise and on topics relevant to course curricula without interference from institutional administrators, elected officials, governing boards, or other entities. Political neutrality should not be interpreted to allow for restrictions on curriculum, research, expression germane to research or curriculum or to otherwise restrain academic exploration within the bounds of traditional academic freedom and academic responsibility."

- “Introduce campus communities to diverse viewpoints, including inviting speakers, sponsoring symposiums and lecturers, or presenting other opportunities to hear differing perspectives and ideas.”

2. IDAHO CODE § 67-5909D

A. Exceptions Relevant to Idaho Code § 67-5909D

As it relates to academic programs, Idaho Code § 67-5909D(7) states that it “shall not be construed to”:

- “Limit **research** by students, faculty, or other research personnel of an institution of higher education or the dissemination of such research;”
- “Limit **creative works** by students, faculty, or other personnel of an institution of higher education or the dissemination of such creative works;”
- “Limit **activities of student organizations** registered with an institution of higher education as long as the organization and activity do not use state funds;”
- “Limit the **appearance of guest speakers and performers** who do not receive any form of compensation in exchange for their presentations, performances, or appearances as long as attendance is voluntary;” and
- “Limit the **academic freedom of any individual faculty member** of an institution of higher education to direct the instruction within such faculty member’s own course not otherwise subject to this section or to limit the **free discussion of ideas in a classroom setting.**”

B. Key Definitions from Idaho Code § 67-5909D

“Diversity, equity, and inclusion’ or ‘DEI’ means any trainings, programs, activities, or instruction that is **derived from or that promotes** the tenets or concepts of critical theory, including but not limited to[:]

- unconscious or implicit bias,
- microaggressions,
- internalized racism,

- cultural appropriation,
- structural equity,
- settler colonialism,
- group marginalization,
- systemic oppression,
- social justice,
- institutional or systemic racism,
- white fragility,
- racial privilege,
- disparate impact,
- intersectionality,
- sexual privilege,
- patriarchy,
- gender theory,
- queer theory,
- neopronouns,
- transgender ideology,
- misgendering,
- othering,
- deadnaming,
- heteronormativity,
- allyship, or
- any other related formulation of these tenets or concepts.”

The foregoing terms are subsequently referred to as the “specifically listed concepts.” Idaho Code § 67-5909D(1)(b)(i).

“‘DEI-related course’ means a course of instruction taken for credit whose subject matter or pedagogical methodology is **derived from or promotes** any of the concepts of critical theory or DEI described in this section.” Idaho Code § 67-5909D(1)(f).

****NOTE:** Certain key terms and phrases (including “critical theory,” “derived from,” and “promotes”) are not defined by the bill but are addressed below.

C. Key Requirements of Idaho Code § 67-5909D

- ***Students cannot be compelled to take “DEI-related courses” except as part of an exempted Program.*** Idaho Code § 67-5909D(2)(f) prohibits institutions of higher education from “establish[ing] curricula or designat[ing] courses at the institution in a manner that requires or otherwise compels a student to enroll in a DEI-related course in order to satisfy the requirements of an academic degree program, including general education, major, minor, or certificate requirements, except as provided in subsection (3) of this section.”
- ***Institutions cannot “require, solicit, or incentivize Faculty... to apply or participate in DEI practices or include DEI-related content in any course” as a condition of course-approval, performance review, or employment incentives, among other things.*** Idaho Code § 67-5909D(2)(g) prohibits institutions of higher education from “requir[ing], solicit[ing], or incentiviz[ing] faculty to apply or participate in DEI practices or include DEI-related content in any course as a condition of approval, designation, or listing as part of any course as a condition of approval, designation, or listing as part of any academic degree program, including general education, major, minor, or certificate requirements, or as a condition of consideration in any faculty member’s performance assessment, promotion, tenure, salary adjustment, or any other incentive, except as provided in subsection (3) of this section.”
- ***Institutions may seek a Board exemption for specific “academic degree program requirements” where the course of study is “primarily focused on racial, ethnic, or gender studies.”*** Idaho Code § 67-5909D(3) states that, “Every institution of higher education in the state of Idaho shall provide a procedure to allow the governing board of the institution of higher education to exempt, upon written request to the board, any academic degree program requirements of any major, minor, certificate, or department the title of which clearly establishes its course of study as primarily focused on racial, ethnic, or gender studies from the prohibitions of subsection (2)(f) and (g) of this section, provided that a student may not be required or otherwise compelled to enroll in any such program, department, or course in order to satisfy the requirements of any other academic degree program, including general education requirements, or any other major, minor, or certificate requirements.”

3. OSBE PROCESS GUIDE RELATED TO ACADEMIC PROGRAMS

A. Academic Freedom and Responsibility

Postsecondary students enter into a voluntary higher educational experience. Students have the right, and corresponding responsibility, to engage in their learning and select the courses and programs most suitable for their own personal learning objectives. No student may be compelled or required to enroll in an academic program. Faculty may not refuse to enroll or teach a student because of the student's beliefs, interpretations, or applications of knowledge. See SBOE Policy III.B.

Idaho Code § 67-5909D does not ban the use of specific words in the classroom, even those listed in the definition of "DEI." The law also provides that it shall not be construed to limit classroom discussion or academic freedom. Faculty and students are encouraged to engage in respectful dialogue about educationally-appropriate subjects in all courses, whether "DEI-related" or not.

B. Provisional Exemption Process for Academic Degree Program Requirements with Courses of Study Primarily Focused on Racial, Ethnic or Gender Studies

Idaho Code § 67-5909D states that, "Every institution of higher education in the state of Idaho shall provide a procedure to allow the governing board of the institution of higher education to exempt, upon written request to the board, academic degree program requirements of any major, minor, certificate, or department the title of which clearly establishes its course of study as primarily focused on racial, ethnic, or gender studies." The Program Exemption Determination Flow Chart (below) is designed to guide institutions as they decide whether and which degree programs to submit to the Board to consider for an Exemption.

Process of Program Exemption Determination:

1. *Identify courses offered for credit at the institution.*

Idaho Code § 67-5909D defines "DEI-related courses" as only those courses "taken for credit" at the institution.

2. ***Of those courses offered for credit, identify which courses are required by the institution for a degree/certificate program, or part of a set of required courses.***

Idaho Code § 67-5909D prohibits institutions from requiring or otherwise compelling students to take “DEI-related courses.” The bill does not impact elective offerings that students may independently select.

“Compelled” or “required” are not defined by Idaho Code § 67-5909D. A course is either compelled or required when necessary to complete a Program. If two or more courses meet a Program requirement, and at least one of the courses is not a “DEI-related course,” then the DEI-related course is not considered to be “compelled” or “required” to complete that Program. Programs which contain DEI-related course requirements may qualify for exemption, as further described below.

For purposes of this memorandum, “Program” refers to a combination of for-credit courses organized for the achievement of specific learning outcomes, as defined by the Institution, that culminates in a minor, major, degree or certificate, based on receipt of a certain number of academic course credits.

3. ***Of required courses, identify which courses meet the definition of “DEI-related courses.”***

Based on the definitions provided in Idaho Code § 67-5909D and a reasonable interpretation of the terms not otherwise defined in the statute, a course is “DEI-related” if it is derived from or promotes tenets or concepts of critical theory, including [specifically listed concepts](#) in the statutory definition of DEI.

- “Critical theory” is not defined in Idaho Code § 67-5909D. For purposes of this memorandum, it is understood to be a Western European philosophy initiated with the work of the Frankfurt School and the [specifically listed concepts](#) in the legislative definition of DEI.
- A course is “derived from” critical theory or the [specifically listed concepts](#) when, considering the course as a whole as designed by the faculty/instructor, the primary subject matter is drawn from, depends upon, or is fundamentally shaped by critical theory or the [specifically](#)

[listed concepts](#) (e.g., 90% of the course material is focused on critical theory or the [specifically listed concepts](#)). A course's pedagogical method is "derived from" critical theory or the specifically listed concepts when the methodology of the course is aimed at the adoption of, or advocacy for critical theory or the specifically listed concepts as normative truths, rather than merely analyzing or discussing them in an academic or critical context.

- A course "promotes" critical theory (including the [specifically listed concepts](#)) when the instructor actively encourages students to personally affirm, adopt or adhere to the identified concepts. Requiring students to "affirm, adopt or adhere" to the identified concepts would also violate existing Board Policy III.B. ("students may not be directed or otherwise compelled to personally affirm, adopt, or adhere to any particular political, religious, or philosophical tenet or ideology") and Idaho Code § 33-138. Applying the guidance provided by the Attorney General in the context of the No Public Funds for Abortion Act, Chapter 87, Title 18, Idaho Code, "The plain meaning of these terms [promote] do not prohibit professors from speaking on [specified topics] in their teaching and scholarship even if that teaching or scholarship could be viewed as supporting [the topic]." AG Opinion 23-4, page 7.

4. ***For required "DEI-related courses," identify whether the institution offers alternatives to meet the academic program requirements.***

Idaho Code § 67-5909D prohibits institutions from compelling students to take DEI-related courses. It does not prohibit the institution from offering Programs which may require DEI-related courses so long as alternatives are available, or where the Program has been granted an exemption (see No. 5, below). **The institution does not need to seek an exemption if it offers an alternative to a required DEI-related course, so long as the alternative course is not a "DEI-related course."**

Institutions should work diligently to assist students with identifying academic programs and courses that meet their educational and professional objectives, consistent with this law.

5. ***Where an alternative to a “DEI-related course” is not possible or available, the institution may seek an exemption for the academic degree program requirements from the Board.***

Idaho Code § 67-5909D requires the creation of an exemption process for credited, required DEI-related courses for which no alternative exists and where the “academic degree program requirements . . . clearly establishes [the program’s course of study] as primarily focused on racial, ethnic, or gender studies.”

OSBE intends to request a delegation of authority from the Board to consider these requests for Summer 2025 sessions (any session that is continuing as of July 1 or commencing between July 1 and August 15) and will work at the direction of the Board to adopt a policy detailing requirements for future sessions.

FOR SUMMER SESSION(S): Institutions seeking an exemption must identify academic programs (majors, minors, or certificates) that include required, credit-bearing DEI-related courses for which no alternative course exists using the Program Exemption Determination Flow Chart. If the Program does not seek or receive an exemption, the law requires the institution to offer alternatives to the Program’s DEI-related courses as described in No.4, above, to avoid running afoul of the prohibition on compelling or requiring students to take DEI-related courses.

For summer session, academic program names must be submitted to OSBE by June 6, 2025. Institutions must identify the Program submitted for exemption, provide a brief explanation for its connection to “racial, ethnic or gender studies,” and include for each required DEI-related course within it, the Course Prefix, Number, Title, and number of credits.

PROGRAM EXEMPTION FLOW CHART

