



July 17, 2019

President David E. Van Zandt  
Office of the President  
The New School  
Alvin Johnson/J.M. Kaplan Hall — 66 West 12th Street  
New York, New York 10011

*Sent via U.S. Mail and Electronic Mail (dvz@newschool.edu)*

Dear President Van Zandt:

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.

FIRE is deeply concerned by the threat to freedom of expression, academic freedom, and fundamental fairness posed by The New School's investigation of Professor Laurie Sheck for an alleged violation of the Policy on Discrimination stemming from a classroom discussion of a James Baldwin essay. Because the complaint concerns faculty expression plainly protected by basic precepts of academic freedom, the investigation and its accompanying threat of discipline violate The New School's governing policies and binding commitments. Aggravating the harm, The New School does not appear to be processing the complaint against Professor Sheck in a manner consistent with its own disciplinary procedures, leaving her in an unacceptably tenuous position that further increases the threat to her academic freedom.

The New School was founded a century ago to be "an institution free from the ancient embarrassments, where well qualified investigators and thinkers can enjoy the advantage of one another's thought and discoveries, and where they can talk freely upon any theme they judge fit to such grown up and responsible men and women as may wish to seek their instruction."<sup>1</sup> Today, celebrating its centennial, The New School informs prospective students and faculty that "[d]issenting opinions, radical ideas, and progressive solutions have always had a home at The New School,"<sup>2</sup> and proclaims that its future "will be shaped by the core values that have defined our past: academic freedom, tolerance, and experimentation."<sup>3</sup>

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<sup>1</sup> ORG. COMM., A PROPOSAL FOR AN INDEPENDENT SCHOOL OF SOCIAL SCIENCE FOR MEN AND WOMEN 9–10 (1918).

<sup>2</sup> *History*, NEW SCHOOL, <https://www.newschool.edu/about/history> (last visited July 11, 2019).

<sup>3</sup> *Mission & Vision*, NEW SCHOOL, <https://www.newschool.edu/about/mission-vision> (last visited July 11, 2019).

It is impossible to square The New School's founding purpose and current aspirations with its investigation of Professor Sheck. FIRE urges you to immediately end the investigation and to affirm to Professor Sheck that The New School honors faculty rights in both policy and practice.

## **I. Facts**

Since 2000, Sheck has taught at The New School as a member of the core faculty in the Master of Fine Arts Writing Program. An accomplished poet and author, she has consistently received excellent course evaluations during her time at The New School. Multiple student evaluations have praised Sheck's ability to create a "safe space" for discussion in her classroom.

This spring semester, Sheck supervised seven graduate theses and taught a graduate literature seminar titled "Audacious Approaches (The Writer as Curator)." The seminar's syllabus focused on "[w]riting as radical questioning" and featured a number of works by African-American authors that grapple with racial discrimination, including writing by Claudia Rankine, Anna Deavere Smith, and bell hooks. The syllabus notified students that "a truly active engagement with a book can often involve a certain amount of un-ease, vertigo, disorientation, stumbling, quickening, bafflement, flashes of excitement, boredom, intoxication, mixed feelings etc." and concluded with a quote from Ralph Waldo Emerson: "People want to be settled. Only in so far as they are unsettled is there any hope for them."

To establish a philosophical framework for the seminar's focus on the role of the writer, particularly an American writer, Sheck assigned her students James Baldwin's 1962 essay "The Creative Process" as an early reading. In the essay, Baldwin argues that Americans have "modified or suppressed and lied about all the darker forces in our history":

We are the strongest nation in the Western world, but this is not for the reasons that we think. It is because we have an opportunity which no other nation has of moving beyond the Old World concepts of race and class and caste, and create, finally, what we must have had in mind when we first began speaking of the New World. But the price for this is a long look backward whence we came and an unflinching assessment of the record.<sup>4</sup>

Sheck led a classroom discussion of Baldwin's essay in an early seminar. In the discussion, Sheck noted that the title of an acclaimed 2016 documentary on Baldwin—*I Am Not Your Negro*—is an alteration of a statement Baldwin made during an appearance as a guest on *The Dick Cavett Show*: "I am not your nigger." (A clip of Baldwin's unaltered statement is included in the documentary.) Sheck said the word "nigger" in quoting Baldwin. She then asked her graduate students about what this alteration might signify or reveal, given Baldwin's presumably deliberate choice of words and his argument about the necessity of reckoning with "the darker forces in our history."

During the ensuing discussion, one student objected to Sheck's quotation of Baldwin's language. When asked by Sheck about her objection, the student explained she had been taught as an undergraduate that white people cannot say the "n-word" under any circumstances. Sheck responded by acknowledging that school of thought and the obvious difficulty of the question, but

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<sup>4</sup> James Baldwin, *The Creative Process*, in CREATIVE AMERICA (1962).

noted that other scholars have responded differently and that other theories of engagement with difficult language exist. The student disagreed with Sheck, noting that both she and Sheck were white and criticizing The New School's writing program as "too white."

Though Sheck and the student disagreed, the exchange was polite, and the seminar discussion proceeded without further comment on that point. Sheck does not recall any student voicing further concerns about the word either during the seminar or afterwards, despite the fact that other readings included it.

During the final class of the semester on May 8, however, the student used her allotted time for a class presentation to deliver a lecture on racism in The New School, the publishing industry, and the classroom, sharply criticizing Sheck in the process. The choice of subject surprised Sheck, as she and the student had previously agreed that the student's presentation would focus on another topic. Nevertheless, and despite the student's refusal to follow the seminar's discussion format, Sheck allowed the student to proceed.

On June 6, 2019, Director of Labor Relations Geycel Best sent Sheck an email with the subject heading "URGENT: Important Meeting Request." Best notified Professor Sheck that she was the subject of "student complaints made under the University's discrimination policy":

I am writing to schedule a meeting for you to meet with me, Kevin Williams, Dean of Students, and Stephanie Szitanyi, Assistant Dean of Part-Time Faculty. This meeting is being called regarding student complaints made under the University's discrimination policy about your conduct. If you wish to bring a union representative to this meeting, you should feel free to do so.

Please let me know if next **Monday June 10th at 10am** work for us [*sic*] to have this meeting. We will provide you with details regarding the complaints when we meet. In the meantime, please be mindful that retaliation is strictly prohibited under the University's policies, so any effort to raise this matter with any of your students or to make any of them feel uncomfortable in anyway for voicing concerns would be considered retaliatory and a policy violation.<sup>5</sup>

The email provided no further details about the allegedly discriminatory conduct. Given the content and tenor of the female student's class presentation, Sheck presumed that the female student and a friend had filed the complaints and that they concerned Sheck's use of the word "nigger" in quoting Baldwin in the seminar discussion at the beginning of the semester.

Accompanied by a union representative, Sheck attended the mandatory meeting with Best and Williams on Thursday, June 27.<sup>6</sup> (Szitanyi did not attend.)

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<sup>5</sup> Email from Geycel Best, Dir. of Labor Relations, Office of Gen. Counsel, New School to Professor Laurie Sheck (June 18, 2019, 2:24 PM EDT) (on file with author) (emphasis in original).

<sup>6</sup> At the start of the meeting, Sheck asked about recording the proceeding. Best indicated that a recording would not be permitted and stated instead that the notes kept by Best and the union representative would suffice. Best told Sheck that had she declined to bring a union representative to the meeting, she would have been permitted

During the meeting, Sheck surmised that a complaint of racial discrimination had been filed by the female student, who is white, and concerned the Baldwin discussion.<sup>7</sup> Best and Williams asked Sheck to explain her pedagogical decision-making. Among other questions, they specifically asked about Sheck’s choice of reading assignments, the possible use of a “trigger warning,” and how she had prepared her graduate students for the material they would discuss in the seminar, including Baldwin’s essay.

Sheck responded with reference to the copies of the syllabus, the assigned Baldwin and bell hooks essays, and the several years of course evaluations that she had distributed to Best and Williams at the beginning of the meeting. Sheck read aloud from the Baldwin essay, and noted that her students—graduate students enrolled in a literature seminar—should reasonably be expected to be able to discuss painful or offensive language and the various implications of altering the words of an iconic writer.

Sheck noted that both the presumptive complainant and the friend Sheck believed to be the co-complainant had indicated their excitement and engagement with the assigned readings throughout the semester in their weekly response papers. Sheck also noted that earlier in the semester, the complaining student had asked Sheck to write her a recommendation for The New School’s fiction program. (Sheck agreed and did so, and understands that the student has since been accepted.) Finally, Sheck discussed her demonstrated success serving as an advisor to students of color and students from the LGBTQ community, and her experience as the mother of a non-white child.

At the conclusion of the meeting, Best provided Sheck with the institution’s “Guidelines for Dealing with Issues of Sexual Harassment and Discrimination” and advised Sheck to familiarize herself with it. Reviewing the document later that day, Sheck noted that the policy requires that “[e]xcept for good cause, a complainant must initiate the process no later than sixty (60) calendar days after the alleged act constituting harassment or discrimination has occurred.”<sup>8</sup> Sheck emailed Best, Williams, and Szitanyi on June 27 to remind them that the Baldwin discussion had occurred early in the semester, and that a complaint filed near or at the end of the semester would be presumptively time-barred. Best acknowledged receipt of Sheck’s letter on July 1, but provided no further information about the complaint or the institution’s timeline for its review.

## **II. Analysis**

The New School’s robust and explicit commitment to academic freedom and freedom of expression protects Professor Sheck’s quotation of James Baldwin in a seminar discussion, and that quotation does not rise to the level of discriminatory harassment. Academic freedom requires The New School to allow Professor Sheck to determine whether, when, and how to teach, write, or

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to record it. Sheck had not been informed of this apparently unwritten policy prior to the meeting. At the end of the meeting, Best told Sheck she would send Sheck a copy of her notes. As of this writing, she has not done so.

<sup>7</sup> As Sheck told Best and Williams, she understood the student to be white because the student had repeatedly identified herself as such throughout the semester.

<sup>8</sup> NEW SCHOOL, GUIDELINES FOR DEALING WITH ISSUES OF SEXUAL HARASSMENT DISCRIMINATION, <https://www.newschool.edu/student-conduct/sexual-harassment-policy>.

discuss material germane to course instruction—even (indeed, especially) when that material references, concerns, or confronts our nation’s most difficult and contentious questions.

**A. *The New School Promises Faculty Academic Freedom and Freedom of Expression.***

The New School makes explicit commitments in official policy, binding contract, and other communications to provide students and faculty members with the rights to academic freedom and freedom of expression. Indeed, the institution’s Policy on the Free Exchange of Ideas explains that the preservation of these rights spurred The New School’s founding:

An abiding commitment to preserving and enhancing freedom of speech, thought, inquiry and artistic expression is deeply rooted in the history of The New School. The New School was founded in 1919 by scholars responding to a threat to academic freedom at home. The establishment of the University in Exile, progenitor of the Graduate Faculty of Political and Social Science, in 1933 was a response to threats to academic freedom abroad. The by-laws of the institution, adopted when it received its charter from the State of New York in 1934, state that the principles of academic freedom and responsibility have ever been the glory of the New School. **The New School, since its beginnings, has endeavored to be an educational community in which public as well as scholarly issues are openly discussed and debated, regardless of how controversial or unpopular the views expressed.** Providing such a forum was seen, from the first, as an integral part of a university’s responsibility in a democratic society.<sup>9</sup>

The Policy guarantees those rights for faculty members in unambiguous terms, and describes what this commitment requires in practice:

**The New School is committed to academic freedom in all forms and for all members of its community.** . . . A university in any meaningful sense of the term is compromised without unhindered exchanges of ideas, however unpopular, and without the assurance that both the presentation and confrontation of ideas takes place freely and without coercion. In this context and because of its distinctive, educational role as a forum for public debate, the University has deep concern for preserving and securing the conditions which permit the free exchange of ideas to flourish.<sup>10</sup>

The institution’s Statement on the Freedom of Artistic Expression expands upon this commitment, proclaiming that “[t]he University’s responsibility for and dedication to securing the conditions in which freedom of expression can flourish extend to all forms of artistic expression, including the fine arts, design, literature, and the performance of drama, music and

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<sup>9</sup> NEW SCHOOL, POLICY ON THE FREE EXCHANGE OF IDEAS, <https://www.newschool.edu/provost/accreditation-policies> (emphasis added).

<sup>10</sup> *Id* (emphasis added).

dance.”<sup>11</sup> The Statement provides that “[a]s members of their community, faculty have the rights and obligations of any citizen of the United States of America.”

The current collective bargaining agreement between the faculty union and The New School further mandates the institution’s protection of faculty expressive rights and academic freedom. Article VIII (“Academic Freedom”) explicitly states that “the University and the Union agree that academic freedom is essential to the fulfillment of the promises of the University,” and provides that both the Policy on the Free Exchange of Ideas and the Statement on the Freedom of Artistic Expression “shall be in effect for all Faculty.”<sup>12</sup>

As a private institution, The New School is not required by the First Amendment to guarantee its students and faculty members academic freedom and freedom of expression. The New School does, however, have a legal and moral duty to honor the promises and agreements it has voluntarily made.

***B. Professor Sheck’s Speech is a Protected Exercise of Academic Freedom and Cannot Be Punished Under The New School’s Policies.***

The New School must understand that pursuant to any meaningful guarantee of academic freedom, faculty must be free to explore potentially controversial or offensive material relevant to the course. Given the subject matter of the graduate seminar, the contours of the discussion, and the fact that the expression at issue is an isolated and germane quotation of one of our nation’s most consequential writers, there can be no question that Professor Sheck’s classroom expression is protected by basic precepts of academic freedom and The New School’s own policies.

As the American Association of University Professors (AAUP) explained in its 1940 Statement of Principles on Academic Freedom and Tenure, faculty “are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject.”<sup>13</sup> In a 1970 comment on the 1940 Statement, the AAUP further explained the relationship between academic freedom and “controversial” material:

The intent of this statement is not to discourage what is “controversial.” Controversy is at the heart of the free academic inquiry which the entire statement is designed to foster. The passage serves to underscore the need for teachers to avoid persistently intruding material which has no relation to their subject.<sup>14</sup>

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<sup>11</sup> NEW SCHOOL, STATEMENT ON THE FREEDOM OF ARTISTIC EXPRESSION, <https://www.newschool.edu/provost/accreditation-policies>.

<sup>12</sup> ACT-UAW LOCAL 7902, COLLECTIVE BARGAINING AGREEMENT BETWEEN THE NEW SCHOOL AND ACADEMICS COME TOGETHER, ACT-UAW, LOCAL 7902, AND THE INTERNATIONAL UNION, UAW, SEPTEMBER 1, 2014–AUGUST 31, 2019, <http://www.actuaw.org/wp-content/uploads/2016/06/TNS-PTF-CBA-2014-2019.pdf>.

<sup>13</sup> AM. ASS’N OF UNIV. PROFESSORS, 1940 STATEMENT OF PRINCIPLES ON ACADEMIC FREEDOM AND TENURE, <https://www.aaup.org/report/1940-statement-principles-academic-freedom-and-tenure>.

<sup>14</sup> *Id.*

Professor Sheck's direct quotation of Baldwin was entirely relevant to the question at hand; indeed, the crux of the question Sheck posed to her students concerned Baldwin's precise language and the impact of its alteration. As the AAUP's 1970 comment indicates, this is exactly the "free academic inquiry" that academic freedom must protect.

The fundamental relevance of Professor Sheck's quotation of Baldwin to her course's focus on "[w]riting as radical questioning" is further evidenced by the extensive discussion of *I Am Not Your Negro*'s title in both scholarly and popular commentary on the film. For example, one writer suggested that the title's alteration of Baldwin's quotation represents a concession to American attitudes on race:

If Baldwin was still alive I imagine he would have fought to have the documentary called *I Am Not Your Nigger* (although the working title of the unpublished manuscript was *Remember This House*). The opening shots show him using the word with real relish beside the smacked-looking face of Dick Cavett. But America still isn't ready for 'nigger' to be in a title.<sup>15</sup>

Another writer made a similar point, while also identifying questions about authorial voice and the film's treatment of Baldwin's sexuality:

In other words, *I Am Not Your Negro* is based on the false premise that, because there are no "talking heads" but only quotations of James Baldwin's that have been selected for the narrative, the voice we hear is Baldwin's. But exclusion can be just as provocative as inclusion, if not more so; in the absence of a gay commentary in any part of the film, it is clear to me that while the writing in *I Am Not Your Negro* is James Baldwin's, the "voice" we hear is Raoul Peck's.

"I Am Not Your Nigger", which appears on the screen in bold letters at the end of the film (and which probably should have been the film's title, but liberal white people would have been uncomfortable asking for tickets at the box office) could also be *I Am Not Your Faggot*.<sup>16</sup>

Writers for *Vulture*, *Bomb*, and *Yes!* echoed these observations and added still more.<sup>17</sup>

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<sup>15</sup> Talia Marshall, *Please take the rope from my throat so that I may sing*, PANTOGRAPH PUNCH (June 24, 2017), <https://www.pantograph-punch.com/post/another-country>.

<sup>16</sup> Max S. Gordon, *Faggot As Footnote: On James Baldwin, 'I Am Not Your Negro', 'Can I Get A Witness?' and 'Moonlight'*, NEW CIVIL RIGHTS MOVEMENT (Feb. 25, 2017), available at <https://medium.com/@maxgordon19/faggot-as-footnote-on-james-baldwin-i-am-not-your-negro-can-i-get-a-witness-and-moonlight-5c07b5a54ea6>. Raoul Peck is the film's director.

<sup>17</sup> See David Edelstein, *James Baldwin's Words Are Freshly Resonant in the Timeless I Am Not Your Negro*, VULTURE (Jan. 31, 2017), <https://www.vulture.com/2017/01/movie-review-i-am-not-your-negro-is-timeless.html> ("Even at its friendliest, the culture still condescends to the Negro — though he doesn't actually say 'Negro.' He says, 'I am not your nigger.'"); Terrance Hayes, *As for Langston Hughes*, BOMB (Apr. 12, 2018), <https://bombmagazine.org/articles/as-for-langston-hughes> ("As I recall, Baldwin never says "I am Not Your Negro" in *I Am Not Your Negro*. Near the end of the film he does say, "I am not your nigger," which suggests what he might have titled the documentary."); Terrance Hayes, *I Am Your Negro Sometimes*, YES! (Mar. 16, 2017), <https://www.yesmagazine.org/peace-justice/i-am-your-negro-sometimes-20170316> ("The ending of *I Am Not*

The extensive commentary on the film’s title in relation to Baldwin’s own words suggests, at the least, that Sheck’s question was not only relevant, but usefully generative, allowing for a variety of responses and inviting further investigation. It is frankly shocking that while this engaging and important academic discussion continues freely online and in print, it serves as grounds for investigation and possible discipline at The New School.

**C. Professor Sheck’s Speech Does Not Approach Racial Discrimination.**

Per New School policy, Sheck’s quotation of Baldwin does not constitute racial discrimination, both on its face and as a protected exercise of academic freedom.

The New School’s “Policy on Discrimination” provides:

Speech or other expression constitutes discriminatory harassment if:

- It deliberately insults, stigmatizes, threatens or intimidates an individual or small group of specific individuals on the basis of race, color, religion, religious practices, gender, sexual orientation, ethnic origin, physical or mental disability, age, marital status or other personal attributes; and
- It is addressed directly to the specific individual or individuals who it insults, stigmatizes, threatens or intimidates; and
- It makes use of “fighting words” or non-verbal symbols.

In the context of discriminatory harassment, “fighting words” or non-verbal symbols are words, pictures or symbols that are, as a matter of common knowledge, understood to convey direct hatred or contempt for human beings and that by their very use inflict injury or tend to incite an immediate breach of the peace.<sup>18</sup>

Sheck’s quotation of Baldwin does not meet this definition of discriminatory harassment. It is commonly understood that the racial slur contained in the quotation may be used to “convey direct hatred.” But in asking her seminar about Baldwin’s use of the slur, Sheck did not deliberately insult, stigmatize, threaten, or intimidate any student, nor did she directly address the quotation to any specific student or group of students. Sheck’s quotation of Baldwin did not inflict any cognizable injury, nor did it incite an immediate breach of the peace.

While Sheck’s quotation of Baldwin offended the complaining student, The New School’s Policy on Discrimination makes clear that expression does not lose protection because of subjective offense alone:

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*Your Negro* implies Baldwin might have titled the film *I Am Not Your Nigger*. In the closing scene, he uses the word with an almost imperceptible grimace, a questioning of familiar, fickle labels like Negro, Black, African American. Yes, this makes the film timeless.”).

<sup>18</sup> NEW SCHOOL, POLICY ON DISCRIMINATION, <https://www.newschool.edu/student-conduct/discrimination-policy>.



This policy is not intended to discourage the expression of ideas that, while they may be offensive, are protected by the university's Policy on the Free Exchange of Ideas and the university's Statement on Freedom of Artistic Expression, and by the First Amendment of the Constitution of the United States.

As discussed above, Sheck's classroom expression is protected by both the Policy on the Free Exchange of Ideas and the Statement on Freedom of Artistic Expression. And while The New School is not bound by the First Amendment, its explicit commitment to First Amendment principles provides further protection for Sheck's speech. *See, e.g., Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957) ("Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our society will stagnate and die."); *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967) ("Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned.") (internal citations and quotation marks omitted).

Consider, for relevant example, *Hardy v. Jefferson Community College*, in which the United States Court of Appeals for the Sixth Circuit denied qualified immunity to administrators who terminated a white adjunct instructor who led a "classroom discussion examining the impact of such oppressive and disparaging words as 'nigger' and 'bitch.'" *Hardy v. Jefferson Cmty. Coll.*, 260 F.3d 671, 674 (6th Cir. 2001). The Sixth Circuit upheld the district court's finding that "the use of the racial and gender epithets in an academic context, designed to analyze the impact of these words upon societal relations, touched upon a matter of public concern and thus fell within the First Amendment's protection." *Id.* at 678. In denying qualified immunity, the Sixth Circuit held that "reasonable school officials should have known that such speech, when it is germane to the classroom subject matter and advances an academic message, is protected by the First Amendment." *Id.* at 683. The Sixth Circuit's reasoning is directly applicable here. Because Sheck's quotation was germane to the seminar discussion and served to advance an academic message, it is likewise protected.

#### **D. *The Investigation and Mandatory Meeting Abridge Academic Freedom and Free Expression Through Their Chilling Effect.***

Initiating a disciplinary investigation into plainly protected expression is itself an affront to the principles of academic freedom and freedom of expression, even if no formal penalty is ultimately imposed. Subjecting a faculty member to a disciplinary investigation for a classroom discussion of potentially offensive but obviously relevant material signals to faculty that The New School's policies offer no actual protection and that self-censorship is necessary. Forcing a faculty member to attend a mandatory meeting to answer for her protected pedagogical decisions betrays The New School's self-conception as, in your words, "a new kind of academic institution that would bring together scholars, creative practitioners, and citizens interested in questioning and debating the most important issues of the day, and pushing cultural boundaries in bold and innovative ways."<sup>19</sup>

Again, The New School is a private institution. However, as discussed above, it has committed itself to protecting academic and expressive freedom, explicitly recognizing the First Amendment

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<sup>19</sup> David E. Van Zandt, *Celebrating 100 Years of New*, NEW SCHOOL (Jan. 9, 2019), <https://blogs.newschool.edu/community-messages/2019/01/09/celebrating-100-years-of-new>.

rights of its faculty. First Amendment jurisprudence therefore illustrates and informs the practical meaning of the institution’s commitments. To that end, in *Sweezy*, the Supreme Court noted that official investigations “are capable of encroaching upon the constitutional liberties of individuals” and have an “inhibiting effect in the flow of democratic expression.” 354 U.S. at 245–48. Accordingly, several appellate courts have held that government investigations into protected expression violate the First Amendment. See *White v. Lee*, 227 F.3d 1214, 1228 (9th Cir. 2000) (holding that a government investigation into clearly protected expression chilled speech and therefore violated the First Amendment); *Rakovich v. Wade*, 850 F.2d 1180, 1189 (7th Cir. 1988) (“[A]n investigation conducted in retaliation for comments protected by the first amendment could be actionable . . .”).

In the university context, federal courts have consistently protected public university faculty expression targeted for censorship or punishment due to subjective offense. In *Levin v. Harleston*, for example, The City College of the City University of New York launched an investigation into a tenured faculty member’s writings on race and intelligence that were perceived as offensive, announcing an *ad hoc* committee to review whether the professor’s expression—which the president of the university announced “ha[d] no place at [the college]”—constituted “conduct unbecoming of a member of the faculty.” 966 F.2d 85, 89 (2d Cir. 1992). The United States Court of Appeals for the Second Circuit upheld the district court’s finding that the investigation constituted an implicit threat of discipline and that the resulting chilling effect constituted a cognizable First Amendment harm. The New School’s investigation of Sheck will engender a similar chill on faculty expression and must be abandoned.

### **E. *The New School is Disregarding its own Disciplinary Procedures.***

Finally, The New School appears to be disregarding its own procedures governing discrimination claims. Those procedures are also flawed as written, as they fail to afford respondents like Professor Sheck sufficient notice of the charges they face and thus deny them the ability to mount a meaningful defense.

The New School’s “Guidelines for Dealing with Issues of Sexual Harassment and Discrimination” state that a complainant “must” file the complaint “no later than sixty (60) calendar days after the alleged act constituting harassment or discrimination has occurred.”<sup>20</sup> Exceptions will only be granted “for good cause.” As Sheck noted in her June 27 email to Best, the apparent source of the complaint—Sheck’s quotation of Baldwin—occurred early in the semester, months prior to Best’s initial email to Sheck.

The timing of the mandatory meeting suggests that the complaint was filed outside of the 60-day window. But despite her email to Best, Sheck has not received any further information about the date of the complaint’s filing or the “good cause” that would allow for a delayed filing. The failure to explain this apparent deviation from policy to Sheck is fundamentally unfair.

Alternatively, the complaint may include allegations of more recent discriminatory conduct. While this is unlikely, given Sheck’s knowledge of her own behavior and the focus of the

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<sup>20</sup> NEW SCHOOL, GUIDELINES FOR DEALING WITH ISSUES OF SEXUAL HARASSMENT DISCRIMINATION, <https://www.newschool.edu/student-conduct/sexual-harassment-policy>.

mandatory June 27 meeting with Best and Williams, Sheck cannot rule out this possibility because The New School has failed to provide her with details of her alleged misconduct or the substance of the complaint against her. This, too, is fundamentally unfair. Keeping Sheck in the dark about her alleged misconduct—much less the identity of her accuser(s)—denies her an opportunity to provide a complete defense against accusations, leaves her to guess as to her ability to teach her class without the threat of investigation and discipline in the future, and sends a clear message to her and her peers that teaching relevant materials that may offend some students is a risky proposition. The resulting chill on faculty speech is unacceptable.

### **III. Conclusion**

The New School must immediately end its investigation into Professor Sheck's protected classroom expression and clarify to her that institutional promises of freedom of expression and academic freedom will be honored.

FIRE is committed to using every resource at our disposal to see this matter through to a just conclusion. We respectfully request receipt of a response to this letter no later than the close of business on July 31, 2019.

Sincerely,



Will Creeley  
Senior Vice President of Legal and Public Advocacy

cc:  
Tim Marshall, Provost and Chief Academic Officer