



FIRE

Foundation for Individual
Rights and Expression

July 6, 2023

Pradeep Khosla
Office of the Chancellor
9500 Gilman Drive #0005
5998 Alcalá Park
La Jolla, California 92093-0005

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

Dear Chancellor Khosla:

FIRE¹ is concerned by UC San Diego's reported decision to charge 67 students with disciplinary violations for allegedly disrupting an alumni awards ceremony.² While the university has both the right and the responsibility to prevent substantial disruptions to expressive events on campus, issuing blanket disciplinary charges—which could result in punishment up to and including expulsion—against students who were not involved in the disruption will inevitably chill expression, in violation of the university's binding First Amendment obligations. The same is true of the university's apparent effort to leverage the disciplinary process by levying unsubstantiated charges against innocent students as a vehicle for preliminary determinations about whether they were involved in actionable misconduct in the first instance. We therefore urge the university to withdraw these charges and conduct a thorough and proper preliminary investigation before moving forward with any disciplinary charges.

Our concerns arise out of UC San Diego's reaction to the May 5 interruption of an alumni awards ceremony by a group of students protesting the university's alleged failure to honor a contract stipulation requiring wage increases for graduate student workers.³ The protesting

¹ As you may recall from prior correspondence, for more than 20 years, the Foundation for Individual and Expression 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.

² The recitation here reflects our understanding of the pertinent facts, which is based on publicly available information. We appreciate that you may have additional information to offer and invite you to share it with us.

³ Paul Sission, *Dozens of UCSD graduate students face possible discipline after May 5 protest*, L.A. TIMES (June 22, 2023) <https://www.latimes.com/california/story/2023-06-22/59-ucsd-grad-students-face-possible-expulsion-after-may-5-protest>.

students stood on stage for approximately 13 minutes before police officers ushered them off-stage, after which the students assembled nearby and continued protesting.⁴

Following the protest, UC San Diego reportedly charged 67 students with disciplinary violations for the protest.⁵ It is also charging at least some of the students with assault for taking your microphone away and allegedly bumping into you, causing you to stumble.⁶

The university informed the charged students they would have the opportunity to “tell their side of the story” during the disciplinary process, and that if there is no “reasonable cause” to believe any given student violated the university’s code of conduct, it will notify that student that no further action will ensue.⁷ Notably, more than a dozen students claim they were not present at the event, but have still received notice of charges.⁸

While UC San Diego has the responsibility to prevent substantial disruptions and credible safety threats from silencing expressive events, it cannot issue blanket disciplinary charges against dozens of students where there is no evidence they engaged in misconduct. Instead, the university should have conducted a thorough review of the incident *before* charging any students, as involving innocent students in formal speech-related investigations violates UC San Diego’s First Amendment obligations.⁹ That is true even when an investigation ultimately concludes in favor of the students, as the question is not whether formal punishment is meted out, but whether the university’s actions “would chill or silence a person of ordinary firmness from future First Amendment activities[.]”¹⁰

Investigations may themselves meet this standard, particularly when they carry the implicit threat of discipline.¹¹ Here, UC San Diego’s policies concerning student discipline include

⁴ UAW Academic Workers UCSD (@UCSD_Unions_UAW), TWITTER (May 5, 2023, 10:08 PM) https://twitter.com/UCSD_Unions_UAW/status/1654669337045893122 [<https://perma.cc/2C74-2ELZ>].

⁵ Sission, *supra* note 3.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ It has long been settled law that the First Amendment binds public universities like UC San Diego. *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).

¹⁰ *Mendocino Envtl. Ctr. v. Mendocino Cty.*, 192 F.3d 1283, 1300 (9th Cir. 1999).

¹¹ *See, e.g., White v. Lee*, 227 F.3d 1214, 1228 (9th Cir. 2000). For example, where a public university launched an investigation into a tenured faculty member’s offensive writings on race and intelligence, announcing an *ad hoc* committee to review whether the professor’s expression—which the university’s leadership said “ha[d] no place at” the college—constituted “conduct unbecoming of a member of the faculty,” the Second Circuit held the investigation itself was an implicit threat of discipline that resulted in a chilling effect constituting cognizable First Amendment harm. *Levin v. Harleston*, 966 F.2d 85, 89-90 (2d Cir. 1992).

significant sanctions—ranging from warning or censure to disciplinary probation, suspension, or dismissal.¹²

Allegedly charging students without first considering where there is any reasonable basis to do so also raises significant due process concerns.¹³ Presuming students guilty until they prove themselves innocent violates all conceptions of fundamental fairness and will chill campus speech, as students may avoid expressive activity out of fear they will unjustly face disciplinary proceedings like those that UC San Diego appears to have initiated here. Accordingly, to comply with its legal obligations under the First Amendment, and to honor basic tenets of due process, the university should have first conducted a preliminary review of the incident to determine which students were involved in misconduct and could properly face disciplinary action—and, conversely, which students engaged only in constitutionally protected protest.

We urge UC San Diego to conduct a more thorough review of the incident to determine which students actually engaged in sanctionable conduct, and to withdraw any disciplinary charges against those not involved in the disruption. We request a substantive response to this letter no later than July 20, 2023.

Sincerely,



Graham Piro
Program Officer, Campus Rights Advocacy

Cc: Jason Thibodeaux, Ed.D., Dean of Student Affairs

¹² *Policies Applying to Campus Activities, Organizations and Students (PACAOS)*, UNIV. OF CAL. SAN DIEGO, <https://policy.ucop.edu/doc/2710530/PACAOS-100>.

¹³ Due Process, FIRE, <https://www.thefire.org/defending-your-rights/due-process>.