



July 3, 2024

Ben Sasse
Office of the President
University of Florida
P.O. Box 113150
Gainesville, Florida 32611-3150

URGENT

Sent via Next-Day Delivery and Electronic Mail (president@ufl.edu)

Dear President Sasse:

FIRE¹ appreciates that the University of Florida is one of the few institutions in the country whose policies earn our “green light” rating, but we are troubled by UF’s unlawful enforcement of new protest rules adopted at the last minute in response to pro-Palestinian demonstrations on campus. We are also concerned by the new rules’ inclusion of mandatory minimum 3-year suspensions for all such violations, regardless of the degree of alleged wrongdoing or individual facts. As a result of UF’s unlawful enforcement of the new protest rules, graduate student Keely Gliwa has been suspended and denied her completed master of science degree, which could have significant repercussions for her future plans.

UF police broke up a peaceful demonstration to arrest three individuals for sitting in folding chairs and playing a card game, in supposed violation of constitutionally suspect rules. Now the university seeks to compound that harm by imposing a lengthy suspension on Gliwa for failing to immediately comply with officers’ unlawful dispersal order while she tried to coax a student having a panic attack to leave with her.

We strongly urge UF to immediately reverse Gliwa’s suspension, award her completed degree, and revise its new protest rules to conform with UF’s constitutional and statutory obligations.

¹ As you may recall from prior correspondence, the Foundation for Individual Rights and Expression (FIRE) is a nonpartisan nonprofit dedicated to defending freedom of speech. You can learn more about our expanded mission and activities at thefire.org.

I. UF suspends peaceful protesters based on hastily-adopted protest rules.

On April 25,² the second day of pro-Palestinian demonstrations on UF’s campus, police began circulating to protesters flyers listing the activities and items prohibited at campus protests.³ The list of “Prohibitive [sic] Items and Activities” included amplified sound, demonstrations inside buildings, littering, camping, sleeping, unmanned signs, blocking egress, “building structures (chairs, stakes, benches, tables),” disruption, threats, violence, weapons, and “[a]ny other items and/or activities deemed to be non-compliant with policy and regulations by university officials.”⁴ The flyers warned that noncompliance will result in a “3 year trespass and suspension,” (emphasis in original) but do not reference official university policy.⁵ In several instances, the flyers appear to differ substantively from official UF policy. UF subsequently confirmed the authenticity of the flyers.⁶

On April 29, demonstrators, including Gliwa, again gathered at and around the Plaza of the Americas on campus. An officer approached a student seated in a lawn chair across the street from the Plaza and reportedly told him use of chairs was prohibited by the new protest rules—despite frequent use of chairs and hammocks at the Plaza and at previous days’ demonstrations. That student then moved to the Plaza where the other protesters were situated and was soon joined by two others with lawn chairs. The three individuals in lawn chairs were playing Uno when, sometime after 7 PM, a larger contingent of approximately 20 officers returned to the Plaza.⁷

One of the demonstrators had a panic attack upon seeing the approaching phalanx of marching police officers, and Gliwa attempted to console her—as shown in video evidence of the scene played during Gliwa’s conduct hearing. Several officers walked past the gathered students to arrest the three individuals in lawn chairs, while one officer ordered those present to disperse.⁸ Gliwa urged the distressed student to leave with her to no avail. A crowd of students followed the police as they walked their initial arrestees down to the street. Gliwa lingered behind on the sidewalk by herself, but within minutes was grabbed by two officers and arrested for failing to

² The recitation here reflects our understanding of the pertinent facts. We appreciate you may have additional information and if so, invite you to share it with us. To these ends, please find enclosed an executed privacy waiver authorizing you to do so.

³ Amanda Friedman & Vivienne Serret, *UF threatens student protesters with suspension, banishment from campus for 3 years*, WUFT (Apr. 26, 2024, 9:18 AM), <https://www.wuft.org/fresh-take-florida/2024-04-26/uf-threatens-student-protesters-with-suspension-banishment-from-campus-for-3-years>; see also Letter from Chris Summerlin, Dean of Students, to Keely Gliwa, student (June 11, 2024) (on file with author) (“The Law Enforcement Officers that participated in the hearing also mentioned that a flyer containing University expectations related to campus demonstrations, and consequences for violations, were handed out by UFPD Officers at multiple points leading up to this incident.”).

⁴ Flyer listing protest rules on file with author. The flyer also lists three permissible activities: speech, expressing viewpoints, and holding signs in hands.

⁵ *Id.* (emphasis in original).

⁶ Friedman & Serret, *supra* note 3.

⁷ Vivienne Serret, *9 people arrested during a pro-Palestinian protest at the University of Florida*, WUSF (Apr. 30, 2024, 9:25 AM), <https://www.wusf.org/2024-04-30/university-of-florida-pro-palestinian-protest-9-arrested>.

⁸ *Id.*

obey the earlier dispersal order. Officers ultimately arrested nine individuals, including Gliwa.⁹ In a statement following the arrests, UF said police broke up the demonstration because the protesters had violated the recently announced protest rules, without further elaboration as to the alleged misconduct that occurred.¹⁰

Dean of Students Chris Summerlin immediately notified Gliwa that she was placed on interim suspension due to the incident.¹¹ Gliwa was charged with four violations of the Student Code of Conduct: Disruptive Conduct, Failure to Comply with Directive, Violation of Law, and Violation of University Policy.¹²

On May 22, Gliwa's conduct hearing was held before a University Officials Board,¹³ which found Gliwa not responsible for disruptive conduct and violation of law, but responsible for failing to comply with a directive and violation of university policy.¹⁴ The Board concluded that Gliwa's account of the incident was credible and supported by the video evidence and witness statements.¹⁵ Although the Board concluded that Gliwa's failure to obey the dispersal order was not willful, it explained that the mere failure to obey constituted a violation of the policy.¹⁶ And because Gliwa was found responsible for the charge of failing to comply, she was therefore also responsible for the separate charge of violating university policy.¹⁷ The Board recommended a sanction of two years' probation based on Gliwa's spotless disciplinary record and the large number of letters testifying to her positive character and contributions to the community.¹⁸ It found suspension an inappropriate sanction because Gliwa posed no danger to UF and the level of violation did not warrant deferring or denying her master's degree.¹⁹

Summerlin rejected the Hearing Body's findings and recommended sanctions. Instead, Summerlin unilaterally concluded Gliwa was responsible for all four of the charged violations

⁹ *Id.* Of the nine people arrested, six were students.

¹⁰ *Id.*

¹¹ Letter from Summerlin to Gliwa (Apr. 29, 2024) (on file with author). Gliwa was also placed on administrative leave from her position as a graduate assistant. Letter from Brook Mercier, Assistant Vice President for Human Resources, to Gliwa (May 2, 2024) (on file with author).

¹² Letter from Aimee Peeples, Associate Director of Student Conduct & Conflict Resolution, to Gliwa (May 1, 2024) (on file with author).

¹³ Hearing Notice from Peeples to Gliwa (May 9, 2024) (on file with author). Per UF policy, the Hearing Board hears the case and recommends findings and sanctions to the Dean of Students. *Regulation 4.040: Student Honor Code and Student Conduct Code*, UNIV. OF FLA., <https://policy.ufl.edu/regulation/4-040/> [<https://perma.cc/A5W6-9JMF>].

¹⁴ Keely Gliwa, *Notes on Hearing Board Recommendations* (on file with author). We are unable to cite directly to the board recommendations because UF has inexplicably refused to provide Gliwa access to the written hearing board recommendations until after her appeal is closed.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* The Board also recommended assigning Gliwa a minimum one-page written addendum in which she could reflect on her actions and their effect on her personal and educational future.

¹⁹ *Id.*

of the Student Conduct Code.²⁰ Specifically, he found her responsible for disruptive conduct and violation of law simply on the basis that she was *arrested*, not found guilty: “As you were arrested during this incident, it is clear your behavior was a substantial, sustained, and continuous disruption to UFPD’s administrative functions. Also, as charges were made through legal action, an alleged violation of law occurred.”²¹

Summerlin also rejected the Board’s recommended sanction and imposed a three-year suspension on Gliwa.²²

II. UF’s hastily-crafted protest rules unlawfully target protesters based on viewpoint.

UF’s disproportionate response to the April 29 peaceful protest—based on new protest rules hastily adopted for seemingly viewpoint-discriminatory reasons—raises serious constitutional concerns. As a public university, any restriction UF places on student expression must comport with the First Amendment’s “bedrock principle” of viewpoint neutrality.²³ UF may establish and enforce reasonable restrictions on the time, place, and manner of expressive activity,²⁴ but it may neither target a particular viewpoint nor selectively enforce its policies on that basis.²⁵

These foundational free-speech principles are enshrined in Florida state law,²⁶ as well in as UF policy.²⁷ Florida law is clear: Outdoor common areas on state university campuses are traditional public forums in which a “person who wishes to engage in an expressive activity ... may do so freely, spontaneously, and contemporaneously as long as the person’s conduct is lawful and does not materially and substantially disrupt the functioning of the public institution of higher education or infringe upon the rights of [others] to engage in

²⁰ Letter from Summerlin to Gliwa (June 11, 2024), *supra* note 3.

²¹ *Id.* at 3.

²² *Id.* The other five students arrested at the April 29 protest fared similarly: Summerlin reportedly rejected their respective hearing boards’ findings and recommended sanctions, found each of the students “responsible” for all charges against them, and imposed minimum 3-year suspensions on each. (One student reportedly received a 4-year suspension, while the others were suspended for 3 years each.)

²³ *See, e.g., Snyder v. Phelps*, 562 U.S. 443, 458 (2011); *Iancu v. Brunetti*, 588 U.S. 388, 393 (2019); *cf., 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).

²⁴ *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (time, place, and manner rules must be content-neutral, narrowly tailored to serve a significant government interest, and leave open ample alternative channels for communication); Fla. Stat. 1004.097(3)(c).

²⁵ *Frederick Douglass Found., Inc. v. District of Columbia*, 82 F.4th 1122, 1142 (D.C. Cir. 2023) (“Neutral regulations may reasonably limit the time, place, and manner of speech, but ... cannot be enforced based on the content or viewpoint of speech.”); *Bus. Leaders In Christ v. Univ. of Iowa*, 991 F.3d 969, 985–86 (8th Cir. 2021) (selective enforcement of facially neutral non-discrimination policy against student group based on its views violated its free speech rights).

²⁶ Fla. Stat. 1004.097 Free expression on campus.

²⁷ *Freedom of Expression Statement*, UNIV. OF FLA. (Apr. 12, 2019), <https://statements.ufl.edu/statements/2019/april/freedom-of-expression-statement.html> [<https://perma.cc/DR9B-G5PG>].

expressive activities.”²⁸ Students, faculty, and members of the public therefore have the right to peacefully protest at UF without regard to the views they wish to express.²⁹

Despite these constitutional and statutory constraints, it appears UF rushed out flyers with new and *more restrictive* rules for protests immediately following the appearance of the pro-Palestinian demonstrators on April 24.³⁰ Whether or not administrators intended the flyers to reflect existing university policy, the rules on the flyers differ substantively from official UF policy. For instance, whereas existing policy requires pre-approval for amplified sound and unmanned signs,³¹ the new protest rules ban amplified sound and unmanned signs altogether.³² Likewise, existing policy (and practice) does not restrict the use of chairs in outdoor spaces on campus at all, while the flyers ban “building structures,” apparently including the mere use of chairs and tables, at protests. Even if the flyers’ new rules are facially content- and viewpoint-neutral, their last-minute adoption and substantive departure from existing university policy strongly suggest UF adopted the rules specifically to restrict the pro-Palestinian demonstrations.

It appears enforcing the flyers’ ban on chairs against the three individuals playing Uno in lawn chairs was the sole reason for the police to break up the April 29 demonstration and order the protesters to disperse. There is no evidence of other violations of law or policy by protesters at the Plaza of Americas. Protesters were gathered in an outdoor common area of campus traditionally open to public expression. Protesters were chatting and playing cards—hardly the type of disruptive or violent activities that would justify breaking up the demonstration. The charges filed against those arrested are further evidence that the demonstration had been peaceful and non-disruptive—all the charges are based on alleged conduct that occurred *after* police ordered the protesters to disperse.

Simply put, the actions by police to break up a peaceful gathering and the resulting arrests and university sanctions on peaceful protesters like Gliwa are based on the selective enforcement of an unlawful rule. By continuing even now to pursue 3-year suspensions of Gliwa and other student protesters, it is clear UF has abdicated its constitutional and state-mandated obligations to protect expressive rights on campus.

III. Gliwa’s 3-year suspension is disproportionate and unreasonable.

Summerlin’s unjustified rejection of all hearing board recommendations favorable to Gliwa also raises serious First Amendment and due process concerns. His execution of the flyers’ promise of minimum 3-year suspensions for any violations of the new protest rules appears to

²⁸ Fla. Stat. 1004.097(3)(b).

²⁹ *Id.*

³⁰ It is unclear whether UF intended the rules to differ substantively from existing university policy and thus acted outside the normal policy process for adoption of substantive rule changes. *See Policy No. 8-001: Policy on Policies*, UNIV. OF FLA. (updated July 6, 2023), <https://policy.ufl.edu/policy/policy-on-policies/> [<https://perma.cc/8SM5-G7LX>].

³¹ *Regulation Number 2.002: Campus Demonstrations*, UNIV. OF FLA. (updated July 10, 2023), <https://policy.ufl.edu/regulation/2-002/> [<https://perma.cc/A37C-WKVN>].

³² *See* Flyer listing protest rules, *supra* note 3.

unlawfully restrict speech based on content, because similar violations of existing university policy by non-protesters are *not* subject to a minimum 3-year suspension.³³

Likewise, the imposition of a mandatory minimum sanction and resulting failure to consider mitigating circumstances in cases of alleged violations of the new protest rules violates UF policy. Specifically, university policy states that conduct violations will be “subject to Sanctions appropriate for the violation(s), with consideration of any mitigating circumstances; including but not limited to the Student’s[] previous conduct record.”³⁴ Yet Summerlin failed to conduct any such individual consideration of mitigating circumstances when he rejected the hearing board’s findings and recommended sanctions and imposed the *ad hoc* mandatory minimum 3-year suspension.

Gliwa has been denied her degree because she attempted to coax a student having a panic attack to leave with her instead of abandoning her in order to more immediately comply with police orders to disperse. Before the arrival of police, she was engaged in the peaceful exercise of her First Amendment rights. Rather than purposefully ignoring the dispersal order, Gliwa was urging another student to leave with her. As the Hearing Board concluded, Gliwa did not willfully engage in misconduct. Punishing her as though she did suggests UF’s goal is not to hold students accountable for their own conduct—as you recently wrote in the Wall Street Journal³⁵—but to deter peaceful protest.

IV. Conclusion.

Given the urgent nature of this matter, we request a substantive response to this letter no later than July 12, confirming UF will retract the disproportionate and unreasonable 3-year suspension imposed on Gliwa and revisit its newly-adopted protest rules to ensure they conform with UF’s constitutional and statutory obligations to protect speech on campus.

Sincerely,



Jessie Appleby
Program Officer, Campus Rights Advocacy

Cc: Chris Summerlin, Dean of Students
Amy Meyers Hass, Vice President and General Counsel

Encl.

³³ See Regulation Number 2.002: Campus Demonstrations, *supra* note 31.

³⁴ See Regulation 4-040: Student Honor Code and Student Conduct Code, *supra* note 13 at § 7 Sanctions.

³⁵ Ben Sasse, *The Adults Are Still in Charge at the University of Florida*, WALL ST. J. (May 3, 2024, 5:26 pm), <https://www.wsj.com/articles/the-adults-are-still-in-charge-at-the-university-of-florida-israel-protests-tents-sasse-eca6389b>.

Authorization and Waiver for Release of Personal Information

I, Keely Gliwa, born on 11/16/2000, do hereby authorize the University of Florida (the "Institution") to release to the Foundation for Individual Rights and Expression ("FIRE") any and all information concerning my current status, disciplinary records, or other student records maintained by the Institution, including records which are otherwise protected from disclosure under the Family Educational Rights and Privacy Act of 1974. I further authorize the Institution to engage FIRE's staff members in a full discussion of all matters pertaining to my status as a student, disciplinary records, records maintained by the Institution, or my relationship with the Institution, and, in so doing, to fully disclose all relevant information. The purpose of this waiver is to provide information concerning a dispute in which I am involved.

I have reached or passed 18 years of age or I am attending an institution of postsecondary education.

In waiving such protections, I am complying with the instructions to specify the records that may be disclosed, state the purpose of the disclosure, and identify the party or class of parties to whom disclosure may be made, as provided by 34 CFR 99.30(b)(3) under the authority of 20 U.S.C. § 1232g(b)(2)(A).

This authorization and waiver does not extend to or authorize the release of any information or records to any entity or person other than the Foundation for Individual Rights and Expression, and I understand that I may withdraw this authorization in writing at any time. I further understand that my execution of this waiver and release does not, on its own or in connection with any other communications or activity, serve to establish an attorney-client relationship with FIRE.

I also hereby consent that FIRE may disclose information obtained as a result of this authorization and waiver, but only the information that I authorize.

DocuSigned by:
Keely Gliwa
3EF16408BB88404

7/3/2024

Student's Signature

Date