



September 26, 2024

Middle States Commission on Higher Education
1007 North Orange Street
4th Floor, MB #166
Wilmington, Delaware 19801

RE: Third Party Complaint | New York University

Sent via email (complaints@msche.org) and webform (msche.org/submit-a-complaint)

To the Middle States Commission on Higher Education:

FIRE¹ respectfully submits this letter as a complaint and as supplemental support for any other complaints from faculty or students regarding New York University, an institution accredited by the Middle States Commission on Higher Education. NYU is not in compliance with Standard II of the Standards for Accreditation and Requirements of Affiliation, which mandates that member institutions possess and demonstrate “a commitment to academic freedom, intellectual freedom, [and] freedom of expression[.]”²

Following the October 7, 2023, Hamas attack on Israel, universities have been rife with disagreement. It is exactly in these moments of elevated civic tensions that universities must stand by their institutional policies promising to protect free speech. NYU has failed to live up to this task as it has repeatedly punished faculty and students for political expression that it promises to protect. This represents not just a moral and contractual failure on NYU’s part, but also a failure to live up to the MSCHE’s standards for accreditation.

¹ As you may recall from prior correspondence, the Foundation for Individual Rights and Expression is a nonpartisan nonprofit dedicated to defending freedom of speech, expression, conscience, and religion, and other individual rights on America’s college campuses. You can learn more about our expanded mission and activities at thefire.org.

² *Standards for Accreditation and Requirements of Affiliation*, Standard II: Ethics and Integrity, MIDDLE STATES COMM’N. ON HIGHER EDUC., <https://www.msche.org/standards/fourteenth-edition/> [<https://perma.cc/ZRD3-B2LW>].

FIRE has made multiple attempts to engage with NYU to address infringements on student and faculty free speech but has received no response. Attached to this complaint is the entirety of our post-October 7, 2023, correspondence with NYU to aid in your evaluation.

Just days after the October 7 attack, the university launched a baseless investigation into law student Ryna Workman for expressing her view that Israel bears full responsibility for Hamas's attack.³ FIRE wrote to NYU on October 16 to remind the university that Workman's comments constituted protected political expression and that disciplinary investigations based on protected expression chill free speech. As of the date of this complaint, we have not received a response.

NYU continued a pattern of punishing community members for protected political expression in December 2023, with its suspension of Professor Tomasz Skiba in response to criticism of comments he made on his personal social media account, such as that he thought some of Hamas's hostages "actually liked their time" as hostages."⁴ We wrote NYU on January 26, 2024, urging it to rescind Skiba's suspension and refrain from investigating private faculty speech, as required by MSCHE. As of the date of this complaint, we have not received a response.

Then, on January 25, 2024, in response to comments such as denying reports that the terrorist group Hamas beheaded babies and raped women in Israel on October 7, NYU suspended Professor Amin Husain.⁵ Again, we reminded NYU that this Commission's standards require NYU to respect professors' "freedom of expression,"⁶ when on February 2, 2024, FIRE wrote NYU asking it to reinstate Husain and refrain from punishing faculty for protected expression. As of the date of this complaint, we have not received a response.

Regardless of these clear warnings to NYU that its repeated assaults on freedom of expression violated not just its own policies but also MSCHE's mandates, NYU has continued to act as though its commitments mean nothing. NYU's chapter of Students for Justice in Palestine planned a March 7, 2024 event to discuss Columbia University professor Rashid Khalidi's book "The Hundred Years' War on Palestine."⁷ According to reports, NYU restricted public access to the event due to "recent incidents of violence" on college campuses.⁸ This restriction violated

³ Vimal Patel & Anemona Hartocollis, *N.Y.U. Law Student Sends Anti-Israel Message and Loses a Job Offer*, N.Y. TIMES (Oct. 11, 2023), <https://www.nytimes.com/2023/10/11/us/nyu-law-harvard-hamas-israel.html>.

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⁶ *Standards for Accreditation and Requirements of Affiliation*, *supra* note 2

⁷ Mariapaula Gonzalez, *NYU restricts SJP access, citing admin concerns of 'contentious speakers' on college campuses*, WASH. SQUARE NEWS (Mar. 14, 2024), <https://nyunews.com/news/2024/03/14/nyu-responds-to-event-cancellations/>.

⁸ *Id.*

the freedom of expression⁹ enshrined in MSCHE’s Standards because SJP has the expressive right to set the attendance criteria for its events.¹⁰

Finally, after a number of students were arrested at a Gaza Solidarity Encampment in Gould Plaza on April 22, NYU reportedly required some students to write “reflection papers” or face a formal reprimand for violation of university policy.¹¹ The papers required students to explain whether their actions at the protest still aligned with their “personal values,” but specified that students could not use the assignment to “justify” their actions.¹² Answers judged unacceptable by an administrator would be deemed not to “meet expectations” or “complete the sanction,” requiring the student to “revise” the answer to comport with NYU’s institutional perspective.¹³ Demanding such obeisance to the official views of NYU as an institution is Orwellian in the most literal sense of the term,¹⁴ and cannot possibly be compatible with the responsibilities of an MSCHE-accredited institution.

And we are concerned that NYU has established that the use of the term “Zionist” in situations outside of instances of clearly unprotected expression may still violate its policies, implicating a wide swathe of protected political speech.¹⁵ For example, the policy states that views expressing an opinion about “a particular country’s policies or practices” do not violate the policy, but the policy’s terms effectively make that speech punishable if it includes “tropes about protected groups,” a clear threat to expression that merely criticizes groups of people.

NYU’s investigations and punishments have restricted, and continue to restrict, the ability of students and faculty to enjoy its promises of academic freedom, intellectual freedom, and freedom of expression. Accrediting agencies, including this Commission, are often a last line of defense in protecting faculty and student freedom of expression at institutions of higher

⁹ *Standards for Accreditation and Requirements of Affiliation*, *supra* note 2.

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¹¹ Karen Matthews, *What would Lisa Simpson do? NYU student protesters asked to ponder ethical issues*, AP NEWS (May 17, 2024), <https://apnews.com/article/nyu-israel-gaza-protests-discipline-apology-simpsons-69269d672fead4aa5c08c3c1cc958cfd/>; *see also* Lucas Saeed (@cityascanass), X (May 13, 2024, 12:24 PM), <https://x.com/cityascanass/status/1790055579144065358?s=46> [<https://perma.cc/DL66-KRJP>]; *see also* Dharma Niles, *Students arrested at Gould Plaza required to complete ‘dozens of writing assignments.’, faculty group says*, WASH. SQUARE NEWS (May 14, 2024), <https://nyunews.com/news/2024/05/14/students-arrested-required-to-complete-assignments/>.

¹² Niles, *supra* note 11.

¹³ *Id.*

¹⁴ George Orwell, *Nineteen Eighty-Four* (Penguin Classics, 2021) (1948) (Pg. 80) (“In the end the Party would announce that two and two made five, and you would have to believe it.”).

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education. Faculty, particularly those without tenure protections, face an unbalanced power dynamic when private institutions that promise free expression fail to live up to those commitments when controversies arise. And the limited time students have at a university limits their ability to organize for long-term change without administrative support.

This Commission's Standard II is one of the strongest protections for faculty and student expression at private universities in the United States, and the Commission has rightly intervened when other institutions have departed from the commitment to protect freedom of expression and its related freedoms.¹⁶ NYU's refusal to bring its policies and conduct in line with Standard II—and its utter failure to respond to FIRE's repeated, good-faith efforts to gain a resolution for those directly and adversely affected by that refusal—similarly merits the Commission's attention.

If FIRE may be of assistance in providing further information or clarification, please do not hesitate to contact me. I may be reached via email at graham.piro@thefire.org and by phone at (215) 717-3473.

Sincerely,



Graham Piro
Faculty Legal Defense Fund Fellow, Campus Rights Advocacy

CC: NYU President, GC, and Board of Trustees

Encl.

¹⁶ For example, the Commission cited administrators' intolerance for criticism, in apparent breach of Standard II, as a basis to open an inquiry into a recently reaccredited institution. Susan Svrluga, *Mount St. Mary's University president resigns*, WASH. POST (Feb. 29, 2016), <https://www.washingtonpost.com/news/grade-point/wp/2016/02/29/mount-st-marys-future-direction-on-the-table-as-leaders-meet-today>.



September 6, 2024

Aisha Oliver-Staley
Office of the General Counsel
New York University
70 Washington Square
South 11th Floor
New York, New York 10012

Sent via U.S. Mail and Electronic Mail (OGC@nyu.edu)

Dear Ms. Oliver-Staley:

FIRE, a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is concerned by the state of free expression at New York University. Over the past year, FIRE has brought to NYU's attention numerous infringements against student and faculty speech rights. In each incident, NYU violated its own commitments to freedom of expression,² as well as the Middle States Commission on Higher Education's requirements for accreditation, which mandate an accredited institution uphold "a commitment to academic freedom, intellectual freedom, [and] freedom of expression[.]"³ We have, thus far, received no response from NYU regarding our concerns.⁴ This year's Free Speech rankings placed NYU at 249/251, a score we would like to see improve in the coming years. As such, we would like to once again extend an offer to

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² "The University is a community where the means of seeking to establish truth are open discussion and free discourse. It thrives on debate and dissent, which must be protected as a matter of academic freedom within the University, quite apart from the question of constitutional rights. The University also recognizes that a critically engaged, activist student body contributes to NYU's academic mission. Free inquiry, free expression, and free association enhances academic freedom and intellectual engagement." *University Student Conduct Policy, Academic Freedom and Protest*, NYU (effective Aug. 17, 2023), <https://www.nyu.edu/about/policies-guidelines-compliance/policies-and-guidelines/university-student-conduct-policy.html> [<https://perma.cc/PC59-VR8A>]; see also *Novio v. N.Y. Acad. of Art*, 317 F. Supp. 3d 803, 805 (S.D.N.Y. 2018) ("New York State courts have permitted a student to bring a breach of implied contract action against an institution of higher education.").

³ *Standards for Accreditation and Requirements of Affiliation*, Standard II, Ethics and Integrity, Criteria, MIDDLE STATES COMM'N ON HIGHER EDUC., <https://www.msche.org/standards/fourteenth-edition/>

⁴ Enclosed you will find copies of FIRE's previous letters sent to the university.

collaborate with NYU to improve its free speech practices. If NYU declines this offer, we will unfortunately be compelled to file the attached complaint with the MSCHE.

What follows includes a non-exhaustive list of instances over the past year in which NYU disregarded its own free expression commitments:

- **Ryna Workman Investigated for Protected Political Speech.** NYU Law student Ryna Workman sent an email to the student body opining that Israel bears full responsibility for the October 7 Hamas attack.⁵ Following this, NYU issued a public statement that all complaints of bias and/or discriminatory behavior will be investigated.⁶ Statements that threaten misconduct investigations in response to protected expression like Workman’s chill student and faculty expression by sending a message that one may face disciplinary action for engaging in core political expression. This chill violates accreditor requirements.⁷ We wrote NYU about this situation on October 16, 2023, and have yet to receive a response.
- **Professor Tomasz Skiba Suspended for Personal Comments.** NYU suspended Professor Tomasz Skiba in response to criticism of comments he made on his personal social media account, including that he does not “condemn Hamas.”⁸ The suspension violated NYU policy that states when professors speak as private citizens, they should be free “from institutional censorship or discipline,”⁹ as well as MCSHE’s requirements for universities to uphold freedom of expression.¹⁰ We wrote NYU about this situation on January 26, 2024, and have yet to receive a response.
- **Professor Amin Husain Suspended for Speaking as a Private Citizen.** After Professor Amin Husain shared his personal views on the Israeli/Palestinian conflict during a teach-in organized by Students for Justice in Palestine, NYU publicly stated he had been suspended.¹¹ This, too, violated NYU’s policy protecting professors’ right to

⁵ Vimal Patel & Anemona Hartocollis, *N.Y.U. Law Student Sends Anti-Israel Message and Loses a Job Offer*, N.Y. TIMES (Oct. 11, 2023), <https://www.nytimes.com/2023/10/11/us/nyu-law-harvard-hamas-israel.html>.

⁶ *Id.*

⁷ Middle States Commission on Higher Education’s requirements for accreditation require an accredited institution to uphold “a commitment to academic freedom, intellectual freedom, [and] freedom of expression.” *Standards for Accreditation and Requirements of Affiliation*, *supra* note 3.

⁸ StopAntisemitism (@StopAntisemites), X (Dec. 8, 2023, 6:18 PM), <https://twitter.com/StopAntisemites/status/1733264790997352835> [<https://perma.cc/82AQ-D8A9>]; *see also* StopAntisemitism (@StopAntisemites), X (Dec. 8, 2023, 6:33 PM), <https://twitter.com/StopAntisemites/status/1733268471574589501> [<https://perma.cc/NT98-VSQL>].

⁹ *Faculty Handbook*, Academic Freedom, NYU (last visited, Aug. 1, 2024), <https://www.nyu.edu/faculty/governance-policies-and-procedures/faculty-handbook/the-faculty/other-faculty-policies/academic-freedom.html> [<https://perma.cc/YM2J-KQUJ>].

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speak as private citizens,¹² as well as MSCHE’s accreditation standards.¹³ We wrote NYU about this situation on February 2, 2024, and have yet to receive a response.

- **NYU Restricts Public Access to SJP Event.** NYU’s SJP chapter planned a March 7, 2024 event to discuss Columbia University professor Rashid Khalidi’s book “The Hundred Years’ War on Palestine.”¹⁴ According to reports, NYU restricted public access to the event due to “recent incidents of violence” on college campuses.¹⁵ This institutional interference violated NYU’s commitment to “open discussion and free discourse” for both SJP and the NYU community.¹⁶ The ability to hold events without interference from administrators based on the event’s content or viewpoint is core not only to NYU’s expressive promises, but to students’ freedom of expression rights as required by MSCHE.
- **NYU Requires ‘Reflection Papers’ for Arrested Protesters.** NYU reportedly required some students who had been arrested at a Gaza Solidarity Encampment in Gould Plaza on April 22, 2024 to write “reflection papers” or they would face a formal reprimand for violation of university policy.¹⁷ The papers required students to explain whether their actions at the protest still aligned with their “personal values,” but specified that students could not use the assignment to “justify” their actions.¹⁸ Answers judged unacceptable by an administrator would be deemed not to “meet expectations” or “complete the sanction,” requiring the student to “revise” the answer to comport with NYU’s institutional perspective.¹⁹ This violates NYU’s commitment to students’ expressive rights by compelling speech, as it requires them to acquiesce to university-sanctioned orthodoxy by renouncing the views that motivated their actions. This also violates MSCHE standards, because it strips students of their intellectual freedom rights.

Each of these incidents is indefensible on its own. Yet the threat to free speech is compounded by the fact that, in each instance, NYU punished students and faculty for speech critical of Israel. FIRE has been unable to locate similar reports of NYU silencing speech critical of

¹² *Faculty Handbook*, *supra* note 9.

¹³ *Standards for Accreditation and Requirements of Affiliation*, *supra* note 3.

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¹⁵ *Id.*

¹⁶ *University Student Conduct Policy*, *supra* note 2.

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¹⁸ *Id.*

¹⁹ Niles, *supra* note 17.

Palestinian policy or leadership. While more evenhanded censorship in violation of NYU's policies would hardly be an improvement, this apparent viewpoint discrimination cannot be overlooked.

When presented with a fresh school year to right these clear wrongs, NYU has instead decided to codify its blatant viewpoint discrimination. A provision in the university's guidance on student conduct policy stipulates that speech involving the term "Zionist" may violate the university's nondiscrimination and anti-harassment policy.²⁰ The term "Zionist" *could* be a part a pattern of unlawful harassment or discrimination, as much speech could. But the policy states that speech such as the "[u]se or dissemination of tropes about protected groups," which includes protected speech, violate the policy.²¹ While the policy states that expressing "views regarding a particular country's policies or practices does not violate policy," the policy's terms effectively make that speech punishable if it fits into the broad category of using "tropes about protected groups."

NYU's actions have sent an unmistakable message to students and faculty that not all opinions can be freely discussed and debated on its campus. If free speech is to flourish at NYU—as its policies intend and guarantee—the university must publicly recommit to expressive freedom and develop a plan to ensure no member of the NYU community fears punishment for their protected expression.

FIRE would welcome the opportunity to discuss these concerns with you privately and to offer tailored support to develop speech-protective strategies of responding during times of controversy. To that end, while we hope to partner with you to resolve these concerns, if we have not heard from you by September 20, 2024, we will seek resolution via the attached accreditor complaint.

Sincerely,



Graham Piro
Fellow, Faculty Legal Defense Fund

Cc: Linda G. Mills, President
Evan R. Chesler, Chair, Board of Trustees

Encl.

²⁰ *NYU's Guidance and Expectations on Student Conduct*, Nondiscrimination and anti-harassment ("NDAH"), NYU, <https://www.nyu.edu/students/student-information-and-resources/student-community-standards/nyu-guidance-expectations-student-conduct.html> [<https://perma.cc/YM3L-UNJD>].

²¹ The term "Zionist" has a long history of referring to supporters of the right of the Jewish people to have a Jewish state. We are concerned that a provision that punishes, for example, a criticism of pro-Zionist bias in media coverage punishes political speech protected by NYU's promises of free expression. Additionally, criticism of Zionists generally would very likely be protected as well.



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Faculty Legal Defense Fund Fellow, Campus Rights Advocacy

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FIRE

Foundation for Individual
Rights and Expression

October 16, 2023

Troy A. McKenzie
Dean of Students
New York University School of Law
Furman Hall
245 Sullivan Street, LC-20
New York, New York 10012

URGENT

Sent via U.S. Mail and Electronic Mail (mckenzie@exchange.law.nyu.edu)

Dear Dean McKenzie:

FIRE¹ is deeply concerned by New York University School of Law's recent suggestion to *The New York Times* that it may be investigating student Ryna Workman for their protected political speech amid intense public and campuswide criticism for expressing views about the Israeli-Palestinian conflict.²

“For legal reasons,” NYU Law told *The Times* Wednesday, “we cannot comment on the specifics of any current student who may be under investigation. Speaking generally, all complaints of bias and/or discriminatory behavior are investigated thoroughly and in accordance with federal, state, and local guidelines, and the appropriate disciplinary action follows the outcome of that process.”³

This raises concerns because, where a bias or harassment complaint seems to allege no more than protected expression, the correct approach, under NYU's clear free expression promises,⁴

¹ As you may recall from previous correspondence, the Foundation for Individual Rights and Expression is a nonpartisan nonprofit dedicated to defending freedom of speech, expression, and conscience, and other individual rights on campus.

² Vimal Patel and Anemona Hartocollis, *N.Y.U. Law Student Sends Anti-Israel Message and Loses a Job Offer*, NEW YORK TIMES, (Oct. 11, 2023) <https://www.nytimes.com/2023/10/11/us/nyu-law-harvard-hamas-israel.html>. Workman uses they/them pronouns. As our recitation of the pertinent facts here reflects public reporting, we welcome any additional information that would inform our analysis, and invite you to share it with us.

³ *Id.*

⁴ See Academic Freedom and Protest, UNIV. STUDENT CONDUCT POLICY, NEW YORK UNIV. (Aug. 16, 2021), <https://www.nyu.edu/about/policies-guidelines-compliance/policies-and-guidelines/university-student-conduct-policy.html>. NYU Law is a school within NYU and thus must comply with the university's policies, including its commitments guaranteeing students expressive freedoms.

is to have administrators conduct a cursory, internal review. If that review confirms the submitter complains of solely protected expression, NYU can promptly close the case without ever notifying the accused student, while at the same time offering support to the aggrieved complainant. To be sure, NYU may face certain important obligations to investigate discrimination, harassment, threats, or other misconduct on campus—but it should not publicly launch investigations where allegations are comprised of nothing more than pure political expression.

That is because even investigations that ultimately resolve in favor of the accused can deeply chill campus speech. The inquiry in such a case is not whether formal punishment is ultimately imposed, but whether the university's actions "chill a person of ordinary firmness" from engaging in future protected activity.⁵ Consequently, NYU's public reference to Workman's speech as potential misconduct sends a chilling message not only to Workman, but to all students and faculty that they may face disciplinary action for engaging in core political expression. Notably, there is no suggestion in any of the public reporting that Workman engaged in any misconduct whatsoever.

Speech that may prompt a bias or harassment complaint often does not, in fact, come close to meeting the high legal bar for discriminatory harassment, which The U.S. Department of Education's Office for Civil Rights has said must include "something beyond the mere expression of views, words, symbols or thoughts that some person finds offensive."⁶ Likewise, in *Davis v. Monroe County Board of Education*, the Supreme Court set forth a clear definition of student-on-student (or peer) harassment.⁷ For student conduct (including expression) to constitute actionable harassment, it must be (1) unwelcome, (2) discriminatory on the basis of a protected status, and (3) "so severe, pervasive, and objectively offensive that it can be said to deprive the victim[] of access to the educational opportunities or benefits provided by the school."⁸

Workman's reported statements, conversely, are the very sort of passionate, core political speech one might expect on a college campus. They are wholly protected even if other students found them offensive or even hateful. In the event such speech nonetheless prompts a bias report, it is incumbent on NYU Law to undertake a cursory review of the complaint before launching a potentially meritless disciplinary proceeding.

Investigations carrying the threat of disciplinary action would particularly chill law students of ordinary firmness, who frequently must disclose any disciplinary action when they apply to legal jobs or the bar. These students face additional incentives to self-censor rather than risk any kind of misconduct investigation that could forestall their legal careers. Yet law students, especially, must be free to debate the legal issues of the day without fearing institutional reprisal for engaging in protected speech.

⁵ *Hous. Cmty. Coll. Sys. v. Wilson*, 212 L. Ed. 2d 303, 311 (2022).

⁶ U.S. Dep't of Educ., Dear Colleague Letter from Gerald A. Reynolds, Assistant Sec'y for Civil Rights (July 28, 2003), <https://www2.ed.gov/about/offices/list/ocr/firstamend.html>. [<https://perma.cc/84RK-NFXR>].


⁷ 526 U.S. 629 (1999).

⁸ *Id.* at 650.

At this moment of intense disagreement on our nation's campuses, students who care about the conflict in the Middle East are sharing their views with the passion and urgency a humanitarian crisis of this scale demands. NYU and NYU Law must act now with equal urgency to reassure Workman—and all students and faculty—that they will not face investigation for exercising their right to do so.

We request a substantive response to this letter no later than close of business on October 20, 2023, confirming NYU will publicly recommit to honoring its clear free speech commitments.

Sincerely,



Alex Morey
Director, Campus Rights Advocacy

Cc: Linda G. Mills, President, New York University
Aisha Oliver-Staley, Senior Vice President and General Counsel, New York University



January 26, 2024

Jack H. Knott
Gale and Ira Drukier Dean
New York University Steinhardt
82 Washington Square East, 4th Floor
New York, New York 10003

URGENT

Sent via U.S. Mail and Electronic Mail (steinhardt.dean@nyu.edu)

Dear Dean Knott:

FIRE¹ is concerned by New York University's suspension of Professor Tomasz Skiba from the Steinhardt School of Culture, Education, and Human Development, possibly due to his pro-Palestinian social media posts. While the posts may have offended some, or even many, a suspension based on these posts would violate NYU's Academic Freedom policy. To the extent NYU Steinhardt is punishing Skiba for his posts, we urge administrators to rescind the suspension and refrain from investigating private faculty speech protected under its own policies in the future.

Our concerns arise from a December 8, 2023, post on the StopAntisemitism social media account that contained an image of Skiba along with a screenshot from his personal Instagram, which read: "No, I don't condemn Hamas. No, I don't condemn Hamas, but I do condemn the United States of America for taking our money and paying for genocide and letting us see it on live TV[.]"² A subsequent StopAntisemitism post shows a video of Skiba stating that most of the hostages released by Hamas were not harmed and even enjoyed their captivity.³

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

² StopAntisemitism (@StopAntisemites), X (Dec. 8, 2023, 6:18 PM), <https://twitter.com/StopAntisemites/status/1733264790997352835> [<https://perma.cc/82AQ-D8A9>]. Note that the recitation here reflects our understanding of the pertinent facts. We appreciate that you may have additional information to offer and invite you to share it with us. To these ends, please find enclosed an executed privacy waiver authorizing you to do so.

³ StopAntisemitism (@StopAntisemites), X (Dec. 8, 2023, 6:33 PM), <https://twitter.com/StopAntisemites/status/1733268471574589501> [<https://perma.cc/NT98-VSQL>].

On January 19, the executive director of Human Resources for NYU Steinhardt informed Skiba that NYU’s Office of Equal Opportunity received reports regarding his conduct and suspended his employment pending investigation.⁴ The school failed to tell Skiba what conduct triggered the investigation or give him an adequate opportunity to respond to the allegations, but the timing suggests the suspension may relate to his social media posts.

NYU explicitly protects the right of faculty to “be free from institutional censorship” when “speak[ing] or writ[ing] as citizens”⁵ and promises the “free exchange of ideas and open inquiry are bedrock principles” at the university.⁶ NYU policy thus protects Skiba’s posts made outside the scope of his employment and as a private citizen. If administrators punish Skiba for his expression, NYU Steinhardt will imperil a broad range of political speech and academic inquiry, especially by the socially marginalized groups it likely intended the policies to protect.

Free speech principles affirm the importance of expression that others find offensive or hateful.⁷ Those principles encompass “sensitive topics” like ethnicity or religion, “where the risk of conflict and insult is high.”⁸ This is particularly true in the university context where “dissent is expected and, accordingly, so is at least some disharmony.”⁹ The “desire to maintain a sedate academic environment does not justify limitations on a teacher’s freedom to express himself on political issues in vigorous, argumentative, unmeasured, and even distinctly unpleasant terms.”¹⁰

Skiba’s social media posts are undoubtedly speech on a matter of public concern,¹¹ as issues related to ethnic and political conflict generally are.¹² The ongoing Israeli-Palestinian conflict

⁴ Letter from Gabriel Lopez, Executive Director of Human Resources, NYU Steinhardt, to Tomasz Skiba, professor (Jan. 19, 2024) (on file with author).

⁵ *Faculty Handbook*, Faculty Policies Applicable to All or Most Members of the Faculty, Including Tenured/Tenure Track Faculty, Full-Time Continuing Contract Faculty, and Other Faculty, Academic Freedom, Section IV. Academic Freedom, N. Y. UNIV. 28 (Nov. 6, 2023), [https://www.nyu.edu/content/dam/nyu/provost/documents/11.6.23 Faculty Handbook CLEAN FINAL.pdf](https://www.nyu.edu/content/dam/nyu/provost/documents/11.6.23%20Faculty%20Handbook%20CLEAN%20FINAL.pdf).

⁶ *Guidelines for Administrative Implementation of NYU Policies on Speech, Speakers, and Dissent*, N. Y. UNIV., <https://www.nyu.edu/about/policies-guidelines-compliance/policies-and-guidelines/guidelines-speech-speakers-dissent.html> [<https://perma.cc/5Y7Y-7BZB>].

⁷ *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (burning the American flag is protected by the First Amendment); *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992) (striking down an ordinance that prohibited placing on any property symbols that “arouse[] anger, alarm or resentment in others on the basis of race, color, creed, religion or gender”); *Snyder v. Phelps*, 562 U.S. 443, 448, 461 (2011) (holding signs outside of soldiers’ funerals reading “Thank God for Dead Soldiers,” “Thank God for IEDs,” and “Fags Doom Nations” was expression protected by the First Amendment); *Matal v. Tam*, 137 S. Ct. 1744, 1764 (2017) (refusing to establish a limitation on speech viewed as “hateful” or demeaning “on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground”).

⁸ *Rodriguez v. Maricopa Cnty. Comm. Coll. Dist.*, 605 F.3d 703, 705 (9th Cir. 2010).

⁹ *Higbee v. E. Mich. Univ.*, 399 F.Supp.3d 694, 704 (E.D. Mich. 2019).

¹⁰ *Rodriguez*, 605 F.3d at 708.

¹¹ Speech on a matter of public concern is that which may “be fairly considered as relating to any matter of political, social, or other concern to the community.” *Connick v. Myers*, 461 U.S. 138, 146 (1983).

¹² *Hardy v. Jefferson Cmty. Coll.*, 260 F.3d 671, 679 (6th Cir. 2001) (questions about “race, gender, and power conflicts in our society” are “matters of overwhelmingly public concern”).

in particular currently captivates the national conversation while triggering large public protests nationwide. As the Supreme Court has said: “Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of government affairs.”¹³

NYU Steinhardt accordingly must refrain from investigating Skiba if it is doing so solely for these posts, even if the investigation would ultimately end in his favor. The question is not whether formal punishment is meted out, but whether an institution’s actions “would chill or silence a person of ordinary firmness” from engaging in future protected expression.¹⁴ An investigation into Skiba’s social media posts will not only chill Skiba’s future expressive activities, but also those of other faculty amid concerns NYU will punish them if someone finds their speech subjectively offensive or hateful.¹⁵

NYU’s policies do not shield Skiba from every consequence of his expression—including criticism by students, faculty, or the broader community. Criticism is “more speech,” the remedy to offensive expression free speech principles prefer to censorship.¹⁶ But university policies that invoke free speech principles limit the *types* of consequences that may be imposed on expression, and who may impose them.

Given the urgent nature of this matter, we request a substantive response to this letter no later than close of business February 2, 2024, confirming NYU Steinhardt will rescind Skiba’s suspension and refrain from investigating private faculty speech protected under its own policies in the future.

Sincerely,



Graham Piro
Program Officer, Campus Rights Advocacy

Cc: Aisha Oliver-Staley, General Counsel
Linda G. Mills, President

Encl.

¹³ *Mills v. Alabama*, 384 U.S. 214, 218 (1966).

¹⁴ *Mendocino Env’t. Ctr. v. Mendocino Cnty.*, 192 F.3d 1283, 1300 (9th Cir. 1999).

¹⁵ *Levin v. Harleston*, 966 F.2d 85 (2d Cir. 1992) (investigation into a tenured faculty member’s writing on race and intelligence, which an ad hoc committee determined was unbecoming of the faculty member, was found to constitute an implicit threat of discipline, and the resulting chilling effect constituted a cognizable First Amendment harm).

¹⁶ *Whitney v. California*, 274 U.S. 357, 377 (1927).



February 2, 2024

Linda G. Mills
Office of the President
New York University
70 Washington Square South
New York, New York 10012

URGENT

Sent via U.S. Mail and Electronic Mail (office.president@nyu.edu)

Dear President Mills:

FIRE¹ is concerned by New York University's continued disregard for its own policies promising students and faculty free expression and academic freedom. FIRE has written NYU on multiple occasions both privately and publicly over the past year concerning its public discipline of undergraduate students, graduate students, and faculty for their expression.² The university's reported suspension of Adjunct Professor Amin Husain for his pro-Palestinian advocacy at a teach-in at The New School is the latest in a line of disturbing developments at a university that promises its faculty wide latitude in expressing themselves but fails to honor those promises when tested.³ We urge NYU to reinstate Husain and refrain from punishing faculty for their protected expression.

Husain attended a teach-in at The New School on November 17, 2023, where he said "ungovernability" is the best strategy for pro-Palestinian advocates and that Israeli land "isn't

¹ As you may recall from previous correspondence, the Foundation for Individual Rights and Expression is a nonpartisan nonprofit dedicated to defending freedom of speech, expression, and conscience, and other individual rights on campus. You can learn more about our recently expanded mission and activities at [thefire.org](https://www.thefire.org).

² See, e.g., Aaron Corpora, *FIRE asks NYU to reinstate chemistry professor whose firing caused furor and to ensure that adjuncts like him have academic freedom*, FIRE (Oct. 27, 2022) <https://www.thefire.org/news/fire-asks-nyu-reinstate-chemistry-professor-whose-firing-caused-furor-and-ensure-adjuncts-him>; FIRE Letter to New York University School of Law, October 16, 2023, *available at* <https://www.thefire.org/research-learn/fire-letter-new-york-university-school-law-october-16-2023>; FIRE Letter to New York University, February 2, 2023, *available at* <https://www.thefire.org/research-learn/fire-letter-new-york-university-february-2-2023>.

³ The recitation here reflects our understanding of the pertinent facts, which is based on public information. We appreciate that you may have additional information to offer and invite you to share it with us.

for Jews.”⁴ On December 7, he appeared at another New School teach-in where he denied reports that Hamas had beheaded babies and raped women during its October 7 attacks on Israel, saying “We know it’s not true.”⁵ He also said New York City was a “Zionist City,” and joked that he had won the “honors” of being deemed anti-Semitic several times,⁶ in reference to an online petition calling for his dismissal from NYU because of his asserted “hate speech against Jews.”⁷ After news outlets reported on Husain’s comments, NYU suspended him on Jan. 25, 2024.⁸

While some may find Husain’s comments offensive, even deeply so, NYU nonetheless permits them through its promises that faculty members “are citizens, members of a learned profession, and officers of an educational institution,” and when “they speak or write as citizens, they should be free from institutional censorship or discipline[.]”⁹ These promises are also vital to NYU’s accreditation, as the Middle States Commission on Higher Education requires an accredited institution to uphold “a commitment to academic freedom, intellectual freedom, freedom of expression[.]”¹⁰ These promises preclude NYU from punishing Husain for his protected expression.

That’s because NYU’s promises align with principles applicable to public university employees, which secure faculty rights to speak as private citizens on matters of public concern,¹¹ even in ways others find offensive.¹² Husain’s speech falls squarely within both those protections, and NYU’s policies. To wit, Husain clearly spoke at the teach-in in his capacity as a private citizen, the “critical” determinant of which is “whether the speech at issue is itself ordinarily within the scope of an employee’s duties.”¹³ Husain spoke at The New School in his personal capacity and not on behalf of NYU, as there was no indication his attendance was part of his job. And his speech was unquestionably on a matter of public concern, which, includes anything that “can

⁴ Francesca Block, *NYU Professor Tells Students of Hamas Atrocities: ‘We Know It’s Not True,’* THE FREE PRESS (Jan. 25, 2024), <https://www.thefp.com/p/nyu-prof-tells-students-hamas-atrocities-untrueu>.

⁵ *Id.*

⁶ *Id.*

⁷ *Demand the Dismissal of NYU Professor Amin Hussain for Promoting Hate Speech*, CHANGE.ORG (Oct. 17, 2023) (last visited Feb. 2, 2024) <https://www.change.org/p/demand-the-dismissal-of-nyu-professor-amin-hussain-for-promoting-hate-speech>.

⁸ *Statement by NYU Spokesperson John Beckman Regarding Amin Husain*, N.Y. UNIV. (Jan. 25, 2024) <https://www.nyu.edu/about/news-publications/news/2024/january/statement-by-nyu-spokesperson-john-beckman-regarding-amin-husain.html> [<https://perma.cc/A6WF-6HV2>].

⁹ *Academic Freedom*, Section II: The Case for Academic Freedom, N.Y. UNIV., <https://www.nyu.edu/faculty/governance-policies-and-procedures/faculty-handbook/the-faculty/other-faculty-policies/academic-freedom.html> [<https://perma.cc/YM2J-KQUJ>].

¹⁰ *Standards for Accreditation and Requirements of Affiliation*, Standard II, Ethics and Integrity, Criteria, MIDDLE STATES COMM’N ON HIGHER EDUC., <https://www.msche.org/standards/fourteenth-edition/> [<https://perma.cc/ZRD3-B2LW>].

¹¹ *See Connick v. Myers*, 461 U.S. 138, 140 (1983).

¹² *Snyder v. Phelps*, 562 U.S. 443, 448, 461 (2011) (in holding that the First Amendment protects protesters holding insulting signs outside of soldiers’ funerals, the Supreme Court remarked that “[a]s a Nation we have chosen ... to protect even hurtful speech on public issues to ensure that we do not stifle public debate”).

¹³ *Lane v. Franks*, 573 U.S. 288, 240 (2014).

be fairly considered as relating to any matter of political, social, or other concern to the community[.]”¹⁴ The October 7 attacks in Israel, and Israel’s military response, which have dominated headlines across the world in recent months, surely qualify.

Were there any question (there isn’t), the Supreme Court has held that even speech that touches on violent topics regarding matters of public concern is protected. In *Rankin v. McPherson*, the Court held free speech principles protected a police department employee who, on hearing President Reagan had been shot, expressed contempt for his policies on welfare and remarked: “If they go for him again, I hope they get him.”¹⁵ The Court explained that, even if others find the statements to be of an “inappropriate or controversial character,” that is “irrelevant” to whether the statement addresses matters of public concern.¹⁶

More broadly, it is vital NYU refrain from punishing speech it finds offensive given the “bedrock principle underlying” freedom of expression: that speech may not be limited “simply because society finds the idea itself offensive or disagreeable[.]”¹⁷ It is this counter-majoritarian principle that protects “insulting, and even outrageous, speech in order to provide adequate breathing space” to public debate,¹⁸ recognizing that those with authority “cannot make principled distinctions” between what speech is sufficiently offensive to suppress.¹⁹ The need for NYU to honor its commitments is all the more important given Husain was commenting on issues of political importance, where the protections of free speech principles are “at their zenith.”²⁰

We request a substantive response to this letter no later than close of business on Monday, February 12, confirming NYU will restore Husain to his previous teaching duties and refrain from punishing faculty for their protected expression.

Sincerely,



Graham Piro
Program Officer, Campus Rights Advocacy

Cc: Aisha Oliver-Staley, General Counsel

¹⁴ *Snyder*, 562 U.S. at 453.

¹⁵ 483 U.S. 378, 381 (1987).

¹⁶ *Id.* at 387.

¹⁷ *Texas v. Johnson*, 491 U.S. 397, 414 (1989).

¹⁸ *Boos v. Barry*, 485 U.S. 312, 322 (1988) (cleaned up).

¹⁹ *Cohen v. California*, 403 U.S. 15, 25 (1971).

²⁰ *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182, 186-87 (1999) (quoting *Meyer v. Grant*, 486 U.S. 414 (1988)).