



FIRE

Foundation for Individual
Rights and Expression

February 22, 2024

Amanda Cochran-McCall
Office of the Vice President for Legal Affairs
The University of Texas at Austin
2304 Whitis Avenue, FAC 438
110 Inner Campus Drive
Austin, Texas 78712-1714

Sent via U.S. Mail and Electronic Mail (Amanda.Cochran@austin.utexas.edu)

Dear Ms. Cochran-McCall:

FIRE appreciates your January 3 response to our enclosed December 20 letter regarding UT Austin's removal of School of Social Work graduate students Callie Kennedy and Parham Daghighi from teaching assignments in the Women & Madness course. However, we remain concerned that UT Austin's continued punishment of these students violates their First Amendment rights.

You claim our letter contains an inaccurate depiction of the situation. If publicly available documents fail to provide a complete account, we again invite you to correct any potential inaccuracies by providing additional information. To this end, we have included our prior letter containing a FOIA request for relevant documents and a FERPA waiver signed by Kennedy.¹

Based on publicly available information, it appears clear that Allan Cole, Dean of the Steve Hicks School of Social Work, removed Kennedy and Daghighi from their teaching assistant roles and banned them from reappointment for a semester because they sent a pedagogically relevant Canvas message to their class about mental health.² Contrary to Cole's assertion in his removal notice, Kennedy and Daghighi's message directly related to course content and responded to a student's request. And as we explained at length in our prior letter, teaching

¹ Letter from Zach Greenberg, FIRE Senior Program Officer, to Jay Hartzell, UT Austin President (Dec. 20, 2023), *available at* <https://www.thefire.org/research-learn/fire-letter-university-texas-austin-december-20-2023>.

² Letter from Allan Cole, Dean of the Steve Hicks School of Social Work, to Parham Daghighi, teaching assistant (Nov. 22, 2023), *available at* <https://drive.google.com/file/d/1dIq8vU0eGDWNj2VcRljN6Zs0ORlPvtJh/view>. A nearly identical letter was sent to Kennedy; Canvas message from Callie Kennedy and Daghighi, teaching assistants, to Women & Madness students (Nov. 16, 2023), *available at* <https://drive.google.com/file/d/1W3JG7xgQ4eXgV4j1zYgTnHGV3hvT-dTk/view>.

assistants retain the First Amendment right to express views “related to scholarship or teaching”³ or “germane to the classroom subject matter.”⁴

Beyond Cole’s perfunctory removal notice, UT Austin has yet to disclose evidence of any policy violations or rationale for its actions.⁵ If, as you claim, “UT Austin holds fast to its commitment to the First Amendment and our faculty’s academic freedom” as “essential principles guiding us every day,”⁶ the university must at the very least explain *why* these principles do not apply to these instructors’ expression. Revoking a teaching assistant role is a disciplinary sanction meriting, at minimum, an explanation from the administration.⁷ Optimally, a school facing viewpoint discrimination allegations, yet dedicated to “protecting First Amendment rights,”⁸ should be eager to provide transparency.

FIRE once again urges your office to promptly rectify these apparent rights violations, or provide requisite due process, to ensure UT Austin meets its binding constitutional obligations.

Sincerely,



Zachary Greenberg
Senior Program Officer, Campus Rights Advocacy

Encl.

³ *Demers v. Austin*, 746 F.3d 402, 406 (9th Cir. 2014).

⁴ *Hardy v. Jefferson Cmty. Coll.*, 260 F.3d 671, 683 (6th Cir. 2001).

⁵ Speech is presumptively protected by the First Amendment unless it falls within a narrow category of unprotected speech, none of which are remotely present here. *Unprotected Speech Synopsis*, FIRE, <https://www.thefire.org/research-learn/unprotected-speech-synopsis> (last visited Feb. 12, 2024).

⁶ Letter from Amanda Cochran-McCall, UT Austin Vice President for Legal Affairs and General Counsel, to Greenberg, (Jan. 3, 2024) (on file with author).

⁷ *Student Conduct and Academic Integrity*, §11–701 Authorized Disciplinary Sanctions, UT AUSTIN (2023-24), <https://catalog.utexas.edu/general-information/appendices/appendix-c/student-conduct-and-academic-integrity> [<https://perma.cc/3RTG-XQVM>] (defining “suspension of rights and privileges” as a disciplinary sanction).

⁸ Letter from Amanda Cochran-McCall, *supra* note 6.



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December 20, 2023

Jay Hartzell
Office of the President
University of Texas at Austin
110 Inner Campus Drive
Stop G3400
Austin, Texas 78712-3400

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

Dear President Hartzell:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is concerned that the University of Texas at Austin reportedly dismissed two graduate students from their teaching assistant roles for sending a Canvas message to their classes about campus mental health resources and the mental health implications of the Israeli-Palestinian conflict. Punishing these instructors for their pedagogically relevant expression violates the university's obligation to uphold student-teachers' First Amendment rights to academic freedom. FIRE calls on UT Austin to immediately reinstate the students to their teaching positions and refrain from punishing protected speech.

Our concerns arise from UT Austin's November 22 dismissal of graduate students Callie Kennedy and Parham Daghighi from their teaching assignment in the Women & Madness course, which focused on exploring the role of gender in the development of mental health resources.² On November 16, Kennedy and Daghighi sent their class a message via the Canvas

¹ For more than 20 years, FIRE has defended freedom of expression, conscience, and religion, and other individual rights on America's university campuses. You can learn more about our recently expanded mission and activities at thefire.org.

² Robert McCoy, *University of Texas at Austin Silences 2 Graduate Students for a Pro-Palestine Message*, DAILY BEAST (Dec. 6, 2023), <https://www.thedailybeast.com/university-of-texas-at-austin-silences-two-graduate-students-for-a-pro-palestine-email>. 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 this end, please find enclosed an executed privacy waiver authorizing you to share information about this matter.

learning management system³ to acknowledge “the mental health implications of the current escalation of violence in Gaza,” to share campus mental health resources, and to support “the rights and autonomy of Palestinians, Indigenous people, and displaced peoples across the globe.”⁴ Kennedy and Daghighi sent the message, for which they received their supervising professor’s permission, in response to a student’s request for such resources.⁵

On November 22, Dean of the Steve Hicks School of Social Work Allan Cole dismissed Kennedy and Daghighi from their teaching positions and informed them they would not have their roles next semester.⁶ Cole claimed they sent the class “an unprompted message about the war in Israel,” which he alleged was “inappropriate given the setting,” because Canvas is “a medium reserved for university and class-related messages.”⁷

But as a public institution bound by the First Amendment to respect academic freedom,⁸ UT Austin may not punish instructors for sending pedagogically relevant messages to their class, even if some are offended by the messages.⁹ This is because academic freedom embraces breathing room for a teacher to choose whether, when, and how to teach, write, or discuss material germane to their class. Notably, the First Amendment protects not only in-class speech, but also expression that is “related to scholarship or teaching”¹⁰ or “germane to the classroom subject matter.”¹¹

Kennedy and Daghighi’s Canvas message is pedagogically relevant to the Women & Madness course because they provided students with UT Austin resources about mental health and commented on the mental health impact of the Israeli-Palestinian conflict—both of which

³ *Canvas-based Programs*, UNIV. OF TEX., <https://professionaled.utexas.edu/canvas-based-programs> [<https://perma.cc/32EB-A4JU>] (“Canvas is an open-source Learning Management System (LMS) that The University of Texas at Austin uses to connect instructors and students online.”).

⁴ Canvas message from Callie Kennedy and Parham Daghighi, teaching assistants, to Women & Madness students (Nov. 16, 2023), *available at* <https://drive.google.com/file/d/1W3JG7xgQ4eXgV4j1zYgTnHGV3hvT-dTk/view>.

⁵ Marcela Rodrigues, *Message about Gaza leads to removal of UT teaching assistants*, THE DALLAS MORNING NEWS (Dec. 1, 2023, 11:39 AM), <https://www.dallasnews.com/news/education/2023/12/01/message-about-gaza-leads-to-removal-of-ut-teaching-assistants>.

⁶ Letter from Allan Cole, Dean of the Steve Hicks School of Social Work, to Daghighi, teaching assistant (Nov. 22, 2023), *available at* <https://drive.google.com/file/d/1dIq8vU0eGDWNj2VcRljN6Zs0ORlPVtJh/view>. A nearly identical letter was sent to Kennedy.

⁷ *Id.*

⁸ *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 quotations and citation omitted).

⁹ *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957) (“academic freedom” is an area “in which government should be extremely reticent to tread.”); *DeJohn v. Temple Univ.*, 537 F.3d 301, 314 (3d Cir. 2008) (“free speech is of critical importance [at universities] because it is the lifeblood of academic freedom”).

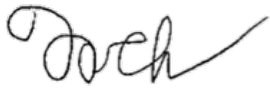
¹⁰ *Demers v. Austin*, 746 F.3d 402, 406 (9th Cir. 2014).

¹¹ *Hardy v. Jefferson Cmty. Coll.*, 260 F.3d 671, 683 (6th Cir. 2001).

relate directly to the course's subject.¹² Nor was their message unprompted, as a student specifically requested information about these resources from Kennedy and Daghighi who, as the course's teaching assistants, are expected to provide pertinent university information to their students upon request. Academic freedom accordingly protects their proper use of Canvas to fulfill a student's request for university resources and to communicate information relevant to the course.

We therefore request a substantive response to this letter no later than close of business on January 2, 2024, confirming that UT Austin will allow Kennedy and Daghighi to resume their teaching assistant roles for the upcoming 2024 Spring Term.

Sincerely,



Zachary Greenberg
Senior Program Officer, Campus Rights Advocacy

Cc: Allan Cole, Dean of the Steve Hicks School of Social Work
Sharon L. Wood, Executive Vice President and Provost

Encl.

¹² See *Hardy*, 260 F.3d at 679 (academic freedom protected professor's fleeting use of slurs in a "lecture on social deconstructivism and language, which explored the social and political impact of certain words" because this language was related to the course and "to matters of overwhelming public concern—race, gender, and power conflicts in our society."); *Kerr v. Hurd*, 694 F. Supp. 2d 817, 842 (S.D. Ohio 2010) (academic freedom protected "Dr. Kerr's advocacy of forceps-assisted vaginal delivery as opposed to Cesarian section" because it related to "the classroom or the clinical context in which medical professors are expected to teach" and was "a matter of public concern, albeit not as overwhelming as the race, gender, and power conflicts involved in *Hardy*."); cf. *Buchanan v. Alexander*, 919 F.3d 847, 854 (5th Cir. 2019) ("Dr. Buchanan's use of profanity and discussion of her sex life and the sex lives of her students was not related to the subject matter or purpose of training Pre-K–Third grade teachers," and was therefore not protected by academic freedom).

Authorization and Waiver for Release of Personal Information and Request for FERPA Records

This is an authorization for the release of records and information, as well as a request for records, under the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and its applicable regulations (particularly 34 CFR § 99.30).

I, Callie Kennedy, born on October 23, 1995, do hereby authorize the University of Texas at Austin (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).

Records requested under FERPA: I request access to and a copy of all documents defined as my "education records" under 34 CFR § 99.3, including without limitation:

- A complete copy of any files kept in my name in any and all university offices;
- any emails, notes, memoranda, video, audio, or other material maintained by any school employee in which I am personally identifiable;
- any and all phone, medical or other records in which I am personally identifiable; and
- the log of requests for and disclosures of my education records, as required by 34 CFR § 99.32(a).

Records requested under state public records law: To the extent the applicable public records law would require a faster response, a more comprehensive response, or production of copies of records:

- I request, pursuant to the applicable state public records law, copies of all records that would be available for my inspection under FERPA;
- To the extent the public records law allows disclosure of responsive records, I request that such records be produced in an electronic format, preferably by email.

Fees: I agree to pay any reasonable copying and postage fees of not more than \$20. If the cost would be greater than this amount, please notify me. Bear in mind, however, that FERPA prohibits the imposition of a fee to search or retrieve records (34 CFR § 99.11).

Request for Privilege Log: If any otherwise responsive documents are withheld on the basis that they are privileged or fall within a statutory exemption, please provide a privilege log setting forth (1) the subject matter of the document; (2) the person(s) who sent and received the document; (3) the date the document was created or sent; and (4) the basis on which it is the document is withheld.

Request for Redaction Log: If any portion of responsive documents must be redacted, please provide a written explanation for the redaction including a reference to the statutory exemption permitting such redaction. Additionally, please provide all segregable parts of redacted materials.

Per 34 CFR § 99.10(b), these records must be made available within **45 days**.

I request that the records be sent to me via email at cnkennedy@utexas.edu and to FOIA@thefire.org.

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:
Callie Kennedy

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12/19/2023

Student's Signature

Date