

Free Speech on Campus

Congress of the United States

Washington, DC 20515

September 28, 2022

The Honorable Miguel Cardona
Secretary
U.S. Department of Education
400 Maryland Ave. SW
Washington, D.C. 20202

Dear Secretary Cardona:

We are conducting oversight over the U.S. Department of Education's (the Department) administration of taxpayers' dollars awarded to public and private colleges and universities under various federal programs. Specifically, we are concerned many of these colleges and universities are undermining free speech and academic freedom on their campuses. Despite this problem, the Department does not seem to be engaged in promoting the free exchange of ideas within our colleges and universities. In fact, we were troubled to hear that the Department did not extend the free speech hotline first established by the past administration which was intended to be a resource to report potential free speech violations.¹ We also do not know the status of the past administration's Religious Liberty and Free Inquiry Rule.² We request a briefing to understand better what actions, if any, the Department is taking to promote free speech and academic freedom on college campuses.

Attacks on Academic Speech and Freedom at U.S. Universities

Institutions of higher learning are places where faculty and students should test, develop, and fine tune theories, thoughts, and ideas—some of which will inevitably be controversial. Unfortunately, colleges and universities are stifling free thought and expression. Among these schools are those which have been perceived as our country's top schools, including Yale Law School,³ Georgetown University Law Center,⁴ University of Washington,⁵ University of Pennsylvania,⁶ and the University of Southern California.⁷ These are just a handful of schools

¹ Jeremiah Poff, *Department of Education silently shuttered DeVos-era free speech hotline*, WASHINGTON EXAMINER (August 17, 2022).

² Jeremy Bauer-Wolf, *Where is the Education Department's proposed religious liberty and free inquiry rule?*, HIGHER ED DIVE (Sept. 7, 2022).

³ Aaron Sibarium, *Hundreds of Yale Law Students Disrupt Bipartisan Free Speech Event*, WASH. FREE BEACON (Mar. 16, 2022).

⁴ David Frum, *Georgetown's Cowardice on Free Speech*, THE ATLANTIC (May 20, 2022).

⁵ Haley Chi-Sing, *University of Washington Professor Sues School, Alleging Free Speech Violation*, FOX NEWS (Jul. 13, 2022).

⁶ Rachel Frommer, *Law Professors Condemned as Racist after Praising America's 1950s 'Bourgeois Culture'*, WASH. FREE BEACON (Aug. 27, 2017); Karen Sloan, *Penn Law Dean Wants 'Major Sanctions' Against Lightning Rod Professor*, REUTERS (Jul. 18, 2022).

⁷ Valerie Richardson, *USC Under Federal Probe for Handling of Alleged Anti-Semitism Against Jewish Student Leader*, WASH. TIMES (Jul. 26, 2022).

that in recent years have either suppressed or threatened to suppress faculty and student free exercise speech.

Often school administrators suppress academic thought because it does not align with ever-changing norms of political correctness.⁸ Administrators at Yale Law School threatened to interfere with one student's ability to pass the character and fitness examination for his bar license unless he apologized to a student group for an email.⁹ St. Louis University disbursed student fees among student organizations discriminately, based on political or ideological affiliation.¹⁰ Certain faculty at University of Pennsylvania, Georgetown University Law Center, and Princeton University have been placed on administrative leave or faced threats of termination or indefinite "investigations" for expressing their opinions outside the classroom on social media.¹¹ A further motivation for such administrative actions taken against faculty and students for expressing their thoughts and opinions are pressure campaigns from student groups encouraging censorship.¹² This is no way to run an institution for frank and honest intellectual discourse.

Incidents at public universities such as University of Washington, University of Michigan, and University of Arizona mirror those at private universities. At University of Washington, a computer science professor was disciplined for refusing to include a controversial "indigenous land acknowledgement" statement on his course syllabi.¹³ In another case, it took a federal lawsuit for University of Michigan to disband its "bias response team" which was dampening free speech by seeking out and reporting student conduct that was considered "hostile" or "biased" against certain groups.¹⁴ This past spring, disruptive student protesters shut down a speech by constitutional law scholar Ilya Shapiro at University of California, Hastings College of the Law.¹⁵ In fact, student protesters routinely try to disrupt and even shut down campus speakers. U.S. Senator Kyrsten Sinema, an instructor at Arizona State University, was harassed even in the bathroom by protestors who were upset with her voting record.¹⁶ All of these instances exemplify how common it has become to disrupt speech.

⁸ *Id.*

⁹ Aaron Sibarium, *A Yale Law Student Sent a Lighthearted Email Inviting Classmates to His 'Trap House.' The School is Now Calling Him to Account*, WASH. FREE BEACON (Oct. 13, 2021).

¹⁰ Caitlyn McCoy, *SLU Doles Hundreds of Thousands of Dollars to Liberal Groups, Conservatives Get \$440*, Young Am.'s Found. (Jun. 23, 2022).

¹¹ Adam Steinbaugh, *Penn Caves to Pressure, Initiates Disciplinary Proceedings Against Tenured Law Professor Amy Wax*, FIRE: FOUND. FOR INDIVIDUAL RIGHTS & EXPRESSION (Jan. 18, 2022); Nate Hochman, *Inside Georgetown Law's Campaign to Cancel Ilya Shapiro: 'This is Melting Down'*, NAT'L REV. (Feb. 2, 2022); Joshua Katz, *Princeton Fed Me to the Cancel Culture Mob*, WALL. ST. J. (May 24, 2022).

¹² *Id.*

¹³ *Supra*, n. 3.

¹⁴ Martin Slagter, *University of Michigan Ends Bias Response Team in Free Speech Lawsuit Settlement*, MICHIGAN LIVE (Oct. 29, 2019).

¹⁵ Erwin Chemerinsky & Howard Gillman, *Free Speech Doesn't Mean Hecklers Get to Shut Down Campus Debate*, WASH. POST (Mar. 24, 2022).

¹⁶ Morgan Keith, *Constituents Confront Senator in Arizona State University Bathroom Over Build Back Better Agenda and Immigration*, BUSINESS INSIDER (Oct. 4, 2021).

Unfortunately, these efforts to suppress free speech are working. College students are increasingly concerned about their ability to freely express their opinions and ideas on their campuses.¹⁷ Only 47 percent of students believe their speech rights are protected, and only about half report being comfortable expressing disagreement with their instructor or peers in class.¹⁸ Disturbingly, 66 percent of students reported believing that it is acceptable to shout down a speaker to prevent them from speaking on campus, while 23 percent reported their belief that it is acceptable to use *actual violence* to stop a campus speech.¹⁹

An Example of Threatening Speech Tolerated Because it is Left Leaning Orthodoxy

However, despite these widespread challenges to freedom of speech, there are strange exceptions which demand our attention. It appears that, if your speech is aligned with left leaning orthodoxy, it will be protected even if it is arguably a threat against the Supreme Court justices. For instance, on June 25, 2022, a Harvard Law School instructor tweeted the following:

The 6 justices who overturned Roe should never know peace again. It is our civic duty to accost them every time they are in public. They are pariahs. Since women don't have their rights, these justices should never have a peaceful moment again.²⁰

The tweet was later taken down. However, this same Harvard instructor acknowledge the power of words in a later tweet:

This is such a stupid take [referring to an article by Bari Weiss relating to the attack on Salman Rushdie]. Words are not violence? How was the fatwa not violence? Rushdie had to go into hiding for 8 years because of it. It was just words!

We need to realize that words have the ability to inspire violence and directly harm people. They are not meaningless.²¹

It appears this Harvard instructor needs to heed her own advice and cease tweeting verbal attacks on politicians, commentators, judges, and others who hold conservative views. Instead, this instructor might want to focus on tolerance and respect for all opinions. U.S. universities should follow suit and foster an environment of tolerance, respect, and peaceful dissent.

¹⁷ Dante Chinni, *Students Value Free Speech, but Feels Theirs is Threatened*, NBC NEWS (Jan. 30, 2022); Jacqueline Pfeffer Merrill, *Is Free Speech At-Risk on Today's College Campuses?* THE HILL (Apr. 15, 2022).

¹⁸ Knight Foundation, *College Student Views on Free Expression and Campus Speech* (Jan. 25, 2022).

¹⁹ *2021 College Free Speech Rankings*, FOUNDATION FOR INDIVIDUAL RIGHTS IN EDUCATION, available at <https://reports.collegepulse.com/college-free-speech-rankings-2021> (last accessed Aug. 10, 2022).

²⁰ Alejandra Caraballo (@Esqueer_), Twitter (Jun. 25, 2022, 7:18 AM), <https://campusreform.org/article?id=19822>.

²¹ Alejandra Caraballo, (@Esqueer_), Twitter (Aug. 15, 2022).

https://twitter.com/Esqueer_/status/1559185185563820032?s=20&t=KzsWGSPLYPdDg1IeTEtoA.

Universities Receive Enormous Amounts of Taxpayer Dollars & Should Support Free Speech—on all Sides of the Political Spectrum

The federal government gives U.S. public and private institutions substantial grants and contracts funded entirely by taxpayers. For example, in 2019, Yale University received approximately \$620 million, Harvard University received approximately \$1.1 billion, University of Pennsylvania received approximately \$830 million, Georgetown University received approximately \$370 million, and University of Southern California received approximately \$1.1 billion.²² Public schools also receive substantial federal funding. In 2019, University of Washington received \$1.2 billion, University of Michigan received \$1.1 billion, University of California Hastings College of the Law received \$30 million, and Arizona State University received \$1 billion in federal taxpayer dollars.²³ In total for 2019, federal funds were remitted to public and private postsecondary education institutions in the form of federal student aid (\$98 billion), grants (\$41 billion), and contracts (\$10 billion).²⁴ Additionally, since 2020, Congress pumped \$76.2 billion in “emergency” funds into the Higher Education Emergency Relief Fund (HEERF) via the *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act), the *Coronavirus Response and Relief Supplemental Appropriations Act* (CRRSAA), and the *American Rescue Plan Act* (ARPA).²⁵ These numbers are evidence that American taxpayers make a significant investment in colleges and universities.

For this reason, these institutions of higher learning should be havens of free speech. Instead, school administrators are undermining the very purpose of their institutions. The proliferation of cancel culture in American higher education threatens the ability of students and faculty to push themselves past their academic limits. The Department should be signaling to these institutions that academic freedom is paramount for the success of students, faculty, and society, and should help them see that limiting free speech is counter to the intellectual goals of academia.

To assist Committee Republicans in conducting important oversight of the Department’s administration of funds for higher education, including what the Department is doing to promote free speech and academic freedom, we request a staff-level briefing as soon as possible, but no later than October 5, 2022.

Thank you for your consideration of this important issue. To make arrangements to schedule the briefing or ask any related follow-up questions, please contact Committee on Oversight and Reform Republican Staff at (202) 225-5074. The Committee on Oversight and Reform is the principal oversight committee of the U.S. House of Representatives and has broad

²² USASpending.GOV – DATALAB, FED. INV. IN HIGHER EDUC. (Oct. 2019), *see* <https://datalab.usaspending.gov/colleges-and-universities/> (last accessed Aug. 10, 2022).

²³ *Id.*

²⁴ *Id.*

²⁵ CARES Act, Pub. L. No. 116-136 § 18004(a)(1-3) (2020); CRRSAA, Pub. L. No. 116-250 § 314, 134 Stat. 1932 (2020); ARPA, Pub. L. No. 117-2 § 2003, 135 Stat. 23 (2021); U.S. Dep’t of Educ., ARP: Am. Rescue Plan (HEERF III), *available at* <https://www2.ed.gov/about/offices/list/ope/arp.html> (last accessed Aug. 10, 2022).

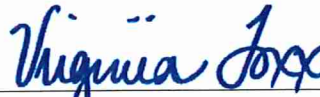
The Honorable Miguel Cardona
September 28, 2022
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authority to investigate "any matter" at "any time" under House Rule X. Thank you in advance for your cooperation with this inquiry.

Sincerely,

A handwritten signature in black ink that reads "James Comer". The signature is written in a cursive style with a large, prominent "J".

James Comer
Ranking Member
Committee on Oversight and Reform

A handwritten signature in blue ink that reads "Virginia Foxx". The signature is written in a cursive style with a large, prominent "V".

Virginia Foxx
Ranking Member
Committee on Education and Labor

cc: The Honorable Carolyn B. Maloney, Chairman
House Committee on Oversight and Reform

The Honorable Robert C. Scott, Chairman
Committee on Education and Labor

VIRGINIA FOXX, NC
Chairman



ROBERT C. "BOBBY" SCOTT,
VA
Ranking Member

MAJORITY – (202) 225-4527

MINORITY – (202) 225-3725

COMMITTEE ON EDUCATION
AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

January 12, 2023

The Honorable Miguel Cardona
Secretary
U.S. Department of Education
400 Maryland Ave. SW
Washington, D.C. 20202

Dear Secretary Cardona:

The Members of the 118th Congress were recently sworn in and, with this new Congress, we have new leadership in the House of Representatives. As the newly elected Chair of the Committee on Education and the Workforce, it is my responsibility to ensure accountability and transparency from federal agencies under the Committee's jurisdiction. With this letter, I am officially putting you on notice that your agency has an obligation to provide timely and complete responses to inquiries and requests made by the Committee.

During the first two years of the Biden administration, agencies have failed to comply fully with congressional oversight letters. I hope that that will end and we can expect robust responses from you in a timely manner to every letter sent from the Committee or its members. Enclosed is a copy of a letter Committee Republicans sent to which the Department of Education (ED) has not a provided full response:

1. September 28, 2022 –Letter to Secretary Cardona regarding free speech at colleges and universities.

The Committee expects ED to provide timely and complete responses to each letter enclosed. You are instructed to respond in writing by no later than January 27, 2023, with your plans for responding to each letter. Enclosed is a copy of the Committee's instructions to be followed for responses to oversight requests.

The Honorable Xavier Becerra
January 12, 2023
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ED is expected to comply with them as it responds to each of the letters cited in this letter and all others issued by the Committee during the 118th Congress. Failure to do so may result in the Committee taking more robust actions to ensure compliance with its oversight requests.

Sincerely,



Virginia Foxx
Chairwoman

Enclosures



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

January 26, 2023

The Honorable Virginia Foxx
Chairwoman
Committee on Education and the Workforce
U.S. House of Representatives
Washington, DC 20515

Dear Chairwoman Foxx:

Thank you for your January 12, 2023, letter to Secretary of Education Miguel Cardona regarding free speech and academic freedom on college campuses. I appreciate hearing from you on this issue in your new capacity as Chairwoman in the 118th Congress, and I am pleased to respond on behalf of the Secretary.

The Biden-Harris Administration strongly believes in free speech as a constitutional right that should be protected at public colleges and universities. The free exchange of ideas is fundamental on college campuses where open inquiry is part of the learning process.

On September 23, 2020, the U.S. Department of Education (Department) issued final regulations regarding compliance with the First Amendment to the U.S. Constitution for public institutions that receive grants from the Department. Since private institutions are not subject to the First Amendment, the regulations also address compliance by private institutions that receive grants from the Department with institutional policies regarding freedom of speech, including academic freedom. These regulations are sometimes referred to as the Free Inquiry Rule.

Under the Free Inquiry Rule, the Department relies on the judiciary as the primary arbiter of alleged violations of First Amendment freedoms concerning public institutions and alleged violations of free speech protections in the institutional policies of private institutions. The Department will determine that a public institution has not complied with the First Amendment only if there is a final, non-default judgment by a State or a Federal court that the public institution or an employee of the public institution, acting in their official capacity, violated the First Amendment. Absent such a final, non-default judgment, the regulations expressly state that the Department will deem the public institution to be in compliance with the First Amendment.

Similarly, for private institutions that receive grants from the Department, the Department will determine that a private institution or its employee, acting on behalf of the private institution, has not complied with its institutional policies only if there is a final, non-default judgment by a State or Federal court to the effect that the institution violated its stated institutional policy regarding freedom of speech or academic freedom. Absent such a judgment, the regulations

expressly state that the Department deems private institutions to be in compliance with their stated institutional policies.

In connection with the 2020 regulations, the Department established a process for institutions to report applicable final, non-default judgments. To date, the Department has not received any final, non-default judgments for any of its grantees. The Department assesses complaints received through any communication channel and takes appropriate action consistent with its legal authority.

The Department previously announced that it was conducting a review of certain aspects of the Free Inquiry Rule while keeping in mind the importance of several key elements, including First Amendment protections, nondiscrimination requirements, and the promotion of inclusive learning environments for all students. We anticipate publishing a notice of proposed rulemaking in the Federal Register in the next few weeks. The rule is currently under interagency review, and the Department welcomes public comment when the formal notice-and-comment period commences.

We look forward to continuing to work with you on these important issues. If you have further questions, please contact the Office of Legislation and Congressional Affairs at (202) 401-0020.

Sincerely,
NASSER
PAYDAR

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NASSER PAYDAR
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Nasser H. Paydar

Assistant Secretary for Postsecondary Education