

Swimmer Riley Gaines on free speech and safety of invited guests on campus

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COMMITTEE ON
EDUCATION AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

April 28, 2023

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The Honorable Miguel Cardona
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary Cardona:

We are appalled at the treatment swimmer Riley Gaines received on April 6, 2023, as an invited speaker at San Francisco State University ("SFSU") – a recipient of approximately \$58 million in federal education funds over the preceding 12 months. Ms. Gaines' reception at SFSU was aggressive and violent, unbecoming any institution of higher learning, let alone one that receives federal funding.

As Ms. Gaines has publicly stated, immediately after speaking she was harassed, subjected to insults, cursed, chased down a hallway, and physically struck two times.¹ The situation got so disorderly that SFSU campus police had to escort her to a safe room where she had to remain for several hours to ensure her safety.² Shortly after the incident, Ms. Gaines tweeted a video of what transpired and issued the following statement:

The prisoners are running the asylum at SFSU. . . I was ambushed and physically hit twice by a man. This is proof that women need sex-protected spaces.

Still only further assures me I'm doing something right. When they want you silent, speak louder.³

¹ <https://nypost.com/2023/04/08/riley-gaines-threatens-legal-action-after-being-attacked-by-trans-rights-activists/>.

² The event began at 7:00 PM PDT; the prevailing circumstances did not become safe enough for Gaines to depart SFSU until around midnight.

³ Riley Gaines (@Riley_Gaines_), Twitter (Apr. 7, 2023, 1:13 AM), https://twitter.com/Riley_Gaines/status/1644206766165737472.

As you may recall, in a letter to you dated September 28, 2022, then-Ranking Member Virginia Foxx of the Committee on Education and Labor (now Committee on Education and the Workforce) and then-Ranking Member James Comer of the Committee on Oversight and Government Reform (now Committee on Oversight and Accountability) wrote to express their concerns about colleges and universities that were stifling free thought and expression. This latest appalling event demonstrates how well-founded those concerns were. The indirect attack on free speech which Ms. Gaines endured is a serious threat to our Constitutionally protected right to free speech: as a direct response to her speech, Ms. Gaines, was cursed, subjected to harassment and insults, chased down a hallway, put in reasonable fear for her own safety, and in her own words was “hit twice by a man.”⁴ This experience may discourage others – whether invited speakers, SFSU students, or professors – from voicing positions which are unpopular among their peers, fearing similar violent treatment from those who disagree with them.

SFSU’s handling of the event was similarly inadequate. The lack of meaningful preparation by the SFSU security was self-evident. Furthermore, rather than condemning such violent behavior, SFSU’s president Lynn Mahoney minimized the abhorrent conduct of the students, describing the conduct merely as “a disturbance after the event concluded” that “delayed the speaker’s departure.”⁵ The president did indicate SFSU would “review[] the incident and, as always, will learn from the experience.”⁶ We can only hope that such a review is thorough, is conducted swiftly, and that steps will be taken to ensure this does not happen again.

The Department of Education (“Department”) has been strangely silent about SFSU’s lack of adequate safety preparation, and more broadly it has failed to demonstrate any leadership on the free exchange of ideas on campuses. In fact, the tenor of the Department’s *Federal Register* notice of February 22, 2023, (“Request for Information Regarding First Amendment and Free Inquiry Related Grant Conditions”) appears to imply the Department is contemplating taking away free speech protections that are not only guaranteed by the Constitution but are conditions attached to the receipt of grants by institutions of higher education.⁷ Further, the increasing proliferation of cancel culture in American postsecondary education continues to chill the ability of students, faculty, and guest speakers to express their viewpoints. Yet, the Department seems unfazed.

To assist the Committee in its oversight of the Department, we request a staff-level briefing as soon as possible, but no later than May 4, 2023, on the following: (a) specific steps the Department has taken from January 20, 2021 through the date of this letter to encourage institutions of higher education to ensure the safety of invited speakers; (2) specific steps the Department has taken from January 20, 2021 through the date of this letter to promote either the Chicago Principles⁸ or the concepts represented by the Chicago Principles; and (3) specific steps the Department has taken from January 20, 2021 through the date of this letter to encourage or

⁴ See *supra* n. 1 & 3.

⁵ <https://president.sfsu.edu/presidents-messages>.

⁶ *Id.*

⁷ See 88 Fed. Reg. 10881 (Feb. 22, 2023).

⁸ See Report of the Committee on Freedom of Expression at the University of Chicago (often referred to as the “Chicago Principles”), <https://provost.uchicago.edu/sites/default/files/documents/reports/FOECommitteeReport.pdf>.

otherwise inform colleges and universities of Section 112 of the Higher Education Act (20 USC § 1011a(a)(1) (Sense of Congress on protected speech) and § 1101a(a)(2)(C) (Sense of Congress on free and open exchange of ideas).

In addition, please respond to the following questions and requests for production of documents (instructions enclosed) no later than two weeks after the date of this letter:

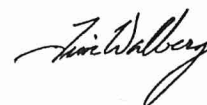
- (1) What has the Department done over the last 12 months to encourage colleges and universities to ensure the safety of invited speakers?
- (2) What has the Department done over the last 12 months to encourage the full range of intellectual discourse and viewpoints at public colleges and universities?
- (3) Provide copies of all Department officers' speeches or statements over the last 12 months wherein the officers have advocated for improved safety on college and university campuses for invited speakers.
- (4) Provide copies of all Department officers' speeches or statements over the last 12 months wherein the officers have encouraged the full range of intellectual discourse and viewpoints at public colleges and universities.

We look forward to hearing from you.

Sincerely,



Virginia Foxx
Chairwoman
U.S. House Committee on
Education and the Workforce



Tim Walberg
Member on Congress



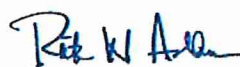
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Jim Banks
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Burgess Owens
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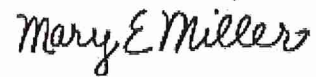


Aaron Bean
Member of Congress



Erin Houchin
Member of Congress

Enclosure



Mary Miller
Member of Congress



Nathaniel Moran
Member of Congress



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

May 12, 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 April 28, 2023, letter to Secretary of Education Miguel Cardona regarding an event at San Francisco State University (SFSU), as well as free expression and safety on college campuses. Your letter was forwarded to me, and I am pleased to respond. Please note that an identical response has been provided to the cosigners of your letter.

The Biden-Harris Administration and Secretary Cardona strongly believe that the free exchange of ideas is fundamental on college campuses where open inquiry is part of the learning process. In particular, the First Amendment requires that public colleges and universities not infringe upon students' rights to engage in protected free speech, and the U.S. Department of Education (Department) expects institutions to follow the law. We also know that colleges and universities often must consider various important interests in achieving their educational missions, including promoting free expression, cultivating an inclusive learning environment, and the importance of protecting the safety of everyone on campus. Physical violence or threats of physical violence are never appropriate. At the Department, we support these interests and know that college campuses and communities are well-equipped to promote them without treating students or invited speakers differently because of their viewpoints.

The Department has taken steps to encourage the free exchange of ideas and uphold the values of free speech and academic freedom across the educational spectrum. For example, on September 15, 2022, in celebration of Constitution Day, I participated in a fireside chat along with a panel of students in an event hosted by the Bipartisan Policy Center titled "[Dialogue Across Difference: Students Bridge Divides](#)." The event focused on students leading the charge to create spaces for students on campus to express their views freely and engage in civil discourse. I discussed the importance of fostering a culture of tolerance and understanding and the values of free expression, inclusion, and student safety, as well as the critical mission of campus communities in promoting these interests. Secretary Cardona also recently [published](#) an op-ed about the importance of learning from a variety of perspectives and not undermining historical truths through censorship of what is taught in the classroom.

Regarding compliance with the First Amendment, Department regulations that predate this Administration rely on the judiciary as the primary arbiter of alleged violations of the First Amendment concerning grantees that are public institutions, such as SFSU, and alleged violations of free speech protections in stated institutional policies of grantees that are private institutions (34 CFR 75.500(b)-(c); 76.500(b)-(c)). These regulations require the Department to 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 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. In this case, the Department has not received notice of a court judgment against SFSU.

As you have noted, on February 22, 2023, the Department published a Request for Information (RFI) Regarding First Amendment and Free Inquiry Related Grant Conditions seeking additional input from stakeholders on the impact of these regulations and will consider the comments we received in response to that RFI in determining whether additional guidance or regulation is needed. However, the regulations referenced above remain in effect. It is essential that public colleges and universities protect First Amendment freedoms, including freedom of speech and freedom of association. These freedoms long predate the Department's regulations and are protected under the First Amendment irrespective of the Department's involvement.

Thank you again for your interest in this important issue. As we continue to work on a more detailed response to your letter, to include any additional speeches or statements that are responsive to your request, I have asked Department staff to keep Committee staff informed. In the meantime, 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 H. Paydar

Assistant Secretary for Postsecondary Education