



FIRE

Foundation for Individual
Rights and Expression

August 28, 2023

Elissa Tenny
Office of the President
School of the Art Institute of Chicago
36 S. Wabash Avenue
Chicago, Illinois 60603

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

Dear President Tenny:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is concerned by The School of the Art Institute of Chicago's Title IX investigation of graduate student Ann Marie Gould for remarks to a fellow student after an art presentation. Although SAIC ultimately reached the correct conclusion that it could not punish Gould's expression merely because it offended a peer, the initiation of an investigation itself chills student expression.

The circumstances giving rise to our concerns are that, during a July 20 presentation of her art, Gould verbally noted her inspiration was the biblical passage 1 Timothy 4:2, which also appeared in the written materials for her presentation.² The next day, as Gould moved a cart of her paintings and presentation materials, another student, Jen Wohlner, approached and asked Gould if she believed Wohlner was going to hell for having "gay sex." Gould says she felt caught off guard, told Wohlner she did not know Wohlner was having "gay sex" and attempted to change the subject.³

On July 26, SAIC's Interim Director of the Low Residency Master of Fine Arts Program Dushko Petrovich called Gould into his office and questioned her about the interaction with Wohlner, including specifically whether she told Wohlner she would go to hell.⁴ Remarkably, Petrovich then told Gould she did not have freedom of speech at SAIC because

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

² This letter 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 share information about this matter.

³ Office for Civil Rights Discrimination Complaint Form from Ann Marie Gould to Department of Education Chicago Office, 4, Aug. 7, 2323 12:07 PM (on file with author).

⁴ *Id.*

the institution values diversity. On August 3, SAIC issued Gould a No Contact Order barring her from all forms of contact with Wohlner.⁵

Gould was also asked to meet with SAIC Title IX Deputy Director Verron Fisher to discuss the No Contact Order and Wohlner's complaints and to respond to the allegations against her,⁶ and she complied with that request on August 4. On August 21, Robert Babcock, SAIC Director for Title IX, EEO & Employee Relations, informed Gould SAIC had resolved the harassment complaint in her favor.⁷

FIRE is pleased by this resolution and that SAIC correctly relied on the standard the Supreme Court articulated in *Davis v. Monroe County Board of Education* in assessing whether Gould's behavior constituted actionable harassment.⁸ Under that standard, conduct (including expression) 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."⁹ In finding Gould's behavior did not meet this high burden, SAIC accurately found harassment must move "beyond the mere expression of opinions, views, words, symbols, or thoughts that someone finds offensive."¹⁰ This aligns with prior federal guidance regarding peer harassment and the protection of free expression, in which the U.S. Department of Education's Office for Civil Rights emphasized that campus harassment must involve evidence beyond mere student offense.¹¹

However, SAIC's handling of this investigation nevertheless runs counter to the free expression commitments in its student handbook promising that it "support[s] and encourage[s] inquiry expression," and guarantees students the rights to freely "examine and discuss all questions of interest to them and to express opinions individually or as part of an organized group, both publicly and privately."¹²

⁵ Email from Verron Fisher, Title IX Deputy Director, to Gould (Aug. 3, 2023, 9:44 AM) (on file with author).

⁶ *Id.*

⁷ Resolution of Your Discrimination/Harassment Complaint Letter from Robert Babcock, Title IX, EEO & Employee Relations Director, to Gould (Aug. 21, 2023) (on file with author).

⁸ Resolution of Your Discrimination/Harassment Complaint Letter, *supra* note 7 (the definition of Harassment found in university Policy states alleged conduct "must be so severe, persistent, or pervasive that it affects...a student's ability to participate in or benefit from an educational program or activity, or it creates an intimidating, threatening, hostile or abusive educational . . . environment.")

⁹ *Davis v. Monroe County Board of Education*, 526 U.S. 650 (1999).

¹⁰ Resolution of Your Discrimination/Harassment Complaint Letter, *supra* note 7, (Gould's conduct did not meet the definition of harassment, because "[a]s the policy states, [alleged conduct] must be *beyond the mere expression of opinions, views, words, symbols, or thoughts that someone finds offensive.*").

¹¹ 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>].

¹² *Student Handbook*, SCH. OF ART INST. OF CHI., Oct. 24, 2022, https://www.saic.edu/sites/default/files/legacy/Student_Handbook.pdf [<https://perma.cc/J6G2-37MB>].

In keeping with these free speech promises, because Title IX investigations target harassment—not protected speech—in cases involving expression, SAIC must direct trained staff to undertake a cursory review of alleged misconduct *before* notifying students of any formal investigation. Such cursory review constitutes a crucial protection for student speech rights.

The investigatory process brings stress, reputational damage, and threat of disciplinary action or sanctions. Notifying students of investigations involving their speech before vetting claims chills expression, even in circumstances where a formal investigation resolves in the student’s favor. In the case at hand, had SAIC done its due diligence in vetting the initial claim of harassment, it would have been clear the claim involved nothing more than an awkward student conversation and could have resolved it without calling Gould in for meetings, thereby risking a chill on her future speech.

Beyond and apart from that, FIRE was surprised and alarmed to hear Petrovich told Gould she lacks freedom of speech at SAIC due to the value it places on diversity, especially given SAIC’s explicit commitments to free expression, as discussed above. Those commitments represent a moral and contractual obligation on the part of SAIC.¹³ Any commitment to diversity that SAIC claims to maintain should include embracing—not punishing—a multiplicity of views, as well as the right to have and/or to express religious beliefs such as any Gould may hold (on which we otherwise take no position, and into which we claim no insight beyond that inferable from the facts relayed herein).

Of course, these principles do not shield Gould from every consequence of her expression—including criticism by students, faculty, or the broader community. Criticism is a form of “more speech,” the remedy to expression with which one disagrees that free speech principles prefer over censorship.¹⁴ But as SAIC is unquestionably committed to free speech principles, it has accepted limits on its power to censor its students—and, contrary to what Petrovich suggested, on its ability to renege on the school’s binding promises.

In view of the foregoing, FIRE asks that SAIC refrain from investigating protected student speech in the future and that it publicly recommit to upholding its promises to protect free speech and expression by revising its policies to comply with the First Amendment. That includes reminding its administrators that SAIC can maintain its commitment without denying its students the freedom of expression SAIC promises.

¹³ See *McAdams v. Marquette Univ.*, 2018 WI 88 (2018) (private university breached contract with a professor over a personal blog post because, by virtue of its adoption of the 1940 AAUP Statement of Principles on Academic Freedom, the post was “a contractually-disqualified basis for discipline”); *Awad v. Fordham Univ.*, 2019 NY Slip Op 51418(U) (Sup. Ct. 2019) (private university’s refusal to recognize a chapter of Students for Justice in Palestine was contrary to the university’s mission statement guaranteeing freedom of inquiry).

¹⁴ *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring).

We request a substantive response to this letter no later than close of business September 8, 2023.

Sincerely,

A handwritten signature in cursive script that reads "Leslie Corbly".

Leslie Corbly
Program Officer, Campus Rights Advocacy

Cc:

Dushko Petrovich, Interim Director, Low Residency Master of Fine Arts
Verron Fisher, Title IX Deputy Director

Encl.

Authorization and Waiver for Release of Personal Information

I, Ann Marie Gould, born on 11/19/1973, do hereby authorize The School of the Art Institute Chicago (the "Institution") to release to the Foundation for Individual Rights and Expression ("FIRE") any and all information concerning my current status, disciplinary records, or other student records maintained by the Institution, including records which are otherwise protected from disclosure under the Family Educational Rights and Privacy Act of 1974. I further authorize the Institution to engage FIRE's staff members in a full discussion of all matters pertaining to my status as a student, disciplinary records, records maintained by the Institution, or my relationship with the Institution, and, in so doing, to fully disclose all relevant information. The purpose of this waiver is to provide information concerning a dispute in which I am involved.

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

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

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

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

DocuSigned by:
Ann Marie Gould
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8/21/2023

Student's Signature

Date