



August 25, 2016

President Fritz J. Erickson
Northern Michigan University
Office of the President
602 Cohodas Hall
1401 Presque Isle Ave.
Marquette, Michigan 49855

Sent via U.S. Mail and Electronic Mail (ferickso@nmu.edu)

Dear President Erickson:

The Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses. Our website, thefire.org, will give you a greater sense of our identity and activities.

FIRE is concerned by the threat to freedom of speech presented by Northern Michigan University's (NMU's) apparent practice of prohibiting students from discussing thoughts about self-harm with other NMU students—a prohibition imposed with the threat of disciplinary consequences. Not only does this practice impose an unconstitutional gag order on NMU students, it also deprives them of peer support at critical moments.

The following is our understanding of the facts. Please inform us if you believe we are in error.

NMU's Student Handbook contains a policy providing for the involuntary withdrawal of students demonstrating "self-destructive behavior"—under which former NMU students have reportedly been expelled¹—but includes a note stating that "[d]ue to changes in Title II [of the Americans with Disabilities Act of 1990] this policy is currently under review." According to Dean of Students Christine Greer, the policy has not been in use since 2013.² NMU reportedly no longer withdraws students solely on the basis of self-destructive behavior. However, the university apparently maintains a practice of notifying students reported to have (or suspected

¹ *NMU Board hears Students on Self-harm Policy, Approves Revised Budget, Property Sale*, UPMATTERS.COM (Dec. 11, 2015), <http://www.upmatters.com/news-upmatters/nmu-board-approves-revised-budget-property-sale>.

² Mary Wardell, *If a student threatens self destruction, what options are available to NMU?*, THE MINING JOURNAL (Nov. 23, 2015), <http://www.miningjournal.net/page/content.detail/id/630166/Policy-debate.html>.

of having) thoughts of self-harm that they are forbidden from communicating with other students about such thoughts.

For example, in the spring semester of 2015, NMU student Katerina Klawes was receiving counseling after being sexually assaulted in July 2014. Although she reportedly had not expressed suicidal ideations to anyone, she nonetheless received the following email from Associate Dean of Students Mary Brundage on March 25, 2015 (with emphasis added):

Dear Kat,

I received a report that others are worried about your well-being. I'd like to meet with you to discuss your options for support and see what I can do to help. . . .

Our self-destructive policy is currently under review, as stated on top of the policy, so it is important that you know a couple of things [*sic*]. First, you will not be removed as a student for seeking help from the appropriate resources. You can use any of the resources listed below without worry. Second, ***Engaging [*sic*] in any discussion of suicidal or self-destructive thoughts or actions with other students interferes with, or can hinder, their pursuit of education and community. It is important that you refrain from discussing these issues with other students and use the appropriate resources listed below. If you involve other students in suicidal or self-destructive thoughts or actions you will face disciplinary action.*** My hope is that, knowing exactly what could result in discipline, you can avoid putting yourself in that position.

[. . .]

Take care,

Mary

Klawes responded by email the same day to ask the following:

Just to clarify, the email said that if I spoke to students about it that it would create a distraction—which could create disciplinary action against me. . . . I was also wondering if I respond to concerned people, is that enough to get me in trouble? I do not want to worry others by not responding and I do not want to have the possibility of getting expelled by reaching out to my friends during this emotionally trying time and I see the possibility of misunderstanding or getting more concerned.

Brundage responded by email, “You can certainly talk to your friends about how you are doing in general and set their minds at ease. You cannot discuss with other students suicidal or self-destructive thoughts or actions. It is a very specific limitation.”

According to an article in the Marquette newspaper *The Mining Journal*, the NMU administration estimated in the fall of 2015 that “about 25-30 students per semester receive a

letter about the ‘protocol,’ informing them of 24-hour campus mental health support and that involving other students in their self-destructive words or actions will result in disciplinary action.”³

After one such letter was circulated anonymously on social media, Klawes posted a petition to Change.org titled, “The ‘I Care Project,’” calling on NMU to revise its policies on student self-destructive behavior.⁴ Several students who had received notice of the “protocol” shared their experiences of the practice’s negative impacts on their lives and educations. The petition attracted over 2,000 signatures within 24 hours and gained the attention of multiple local media outlets.⁵

In comments to *The Mining Journal*, President of the Michigan chapter of the National Alliance for Mental Illness Kevin Fischer “called the policy and the letter ‘outrageous.’” Fischer went on, “For a university to threaten discipline if they share their situation with another student is just absolutely unacceptable[.] . . . I’ve never seen anything like that before.”⁶

In the same article, Dean Greer “said the policy is meant to protect students with self-harming thoughts or behavior as well as their friends and roommates, who may not be equipped to handle an issue of such gravity.” She further stated, “[R]elying on your friends can be very disruptive to them. Some students may be able to handle it, but many students are completely overwhelmed by it.”

After students spoke out about NMU’s self-harm policies and practices at a December 2015 Board of Trustees meeting, the administration promised to form a task force to review the issue.⁷ NMU issued the following statement on its website:

The mental health and well being of students is a priority for Northern Michigan University. The feedback that has come as a result of the self-harm email that began circulating on Nov. 11, 2015 and the subsequent controversy has been heard. The university welcomes the opportunity to improve its processes and policies to serve the best interest of its students while upholding our ethical and legal responsibilities. Students are encouraged to work through [Associated Students of NMU] and/or the Dean of Students Office to provide their input.⁸

But despite NMU’s assurances that its students’ concerns have been heard and understood, the

³ Mary Wardell, *Students Sound Off: NMU Policy Gets Personal*, THE MINING JOURNAL (Nov. 24, 2015), <http://www.miningjournal.net/page/content.detail/id/630208/Students-sound-off.html?nav=5006>.

⁴ CHANGE.ORG, *The “I Care Project”: Revise NMU Student Self-Destructive Behavior Policy*, <https://www.change.org/p/northern-michigan-university-the-i-care-project-revise-nmu-student-self-destructive-behavior-policy> (last visited Aug. 24, 2016).

⁵ See Nicole Walton, *NMU email tells suicidal students to talk only to a professional*, WNMU-FM (Nov. 13, 2015), <http://wnmufm.org/post/nmu-email-tells-suicidal-students-talk-only-professional#stream/0>; Wardell, *supra* note 2; *NMU Board hears Students on Self-harm policy, Approves Revised Budget, Property Sale*, UPMATTERS.COM, *supra* note 1.

⁶ Wardell, *supra* note 2 (internal quotation marks omitted).

⁷ UPMATTERS.COM, *supra* note 1.

⁸ NORTHERN MICHIGAN UNIVERSITY, *University Response to Self-Harm Email*, <http://www.nmu.edu/mc/university-response-self-harm-email> (last visited Aug. 24, 2016).

administration has yet to announce an end to the practice of preventing students from speaking with their peers about self-harm. Moreover, at least one incoming NMU freshman for the 2016–2017 academic year, attending a First Year Student Orientation Session, reported that her group of orientees was told they could face negative consequences if they discussed thoughts of self-harm with other students.

We write today to express our deep concern regarding the illegality and potential harm of such a restriction on student-to-student speech. As a constitutional matter, the rule cannot stand. It is an impermissible infringement on NMU students’ right to speak freely on a chosen topic without fear of punishment. The First Amendment simply does not tolerate a public institution’s regulation of the private conversations of peers in such a manner.

It has long been settled law that the First Amendment is binding on public universities such as NMU. *See 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 citation omitted).

On a college campus, there is hardly a more fundamental exercise of a student’s First Amendment rights than engaging fellow students in dialogue. NMU’s restriction of student-to-student communication on a specific category of speech—the topic of self-harm—is a content-based restriction of expression subject to the highest level of constitutional scrutiny. Subject-matter speech restrictions are presumptively invalid and will be deemed constitutional only if narrowly tailored to serve a compelling government interest, meaning they must be the least restrictive means available to achieve the asserted interest. *See Ashcroft v. American Civil Liberties Union*, 542 U.S. 656, 660, 666 (2004) (applying strict scrutiny to content-based restriction of sexual expression); *Republican Party v. White*, 536 U.S. 765, 774–75 (2002) (applying strict scrutiny to strike down prohibition on judicial candidates announcing their views on disputed legal and political issues).

In addition to being a suspect content-based restriction, NMU’s practice of prohibiting speech on self-harm imposes a prior restraint on student expression. “Prior restraints on speech and publication are the most serious and least tolerable infringement on First Amendment rights.” *Nebraska Press Association v. Stuart*, 427 U.S. 539, 559 (1976). Courts faced with prior restraints meet them with a “heavy presumption against [their] constitutional validity.” *New York Times v. United States*, 403 U.S. 713, 714 (1971). Indeed, the practice effectively imposes a gag order on NMU students in crisis or perceived by the administration as being in crisis. Gag orders, like content-based restrictions, must meet a high burden to pass First Amendment muster. *See United States v. Ford*, 830 F.2d 596, 600 (6th Cir. 1987) (applying strict scrutiny to strike down gag order on criminal defendant from publically discussing case against him).

NMU’s restriction on student peer discussions cannot withstand this exacting constitutional scrutiny. While NMU may have a legitimate interest in protecting the health and well-being of students in crisis and students whose friends confide in them self-destructive thoughts, the means NMU uses to address this interest cannot reasonably be considered the least restrictive available and may indeed be harmful to students.

Leaders in the field of suicide prevention and collegiate mental health identify peer support as an important part of a comprehensive institutional approach to prevention. The Jed Foundation, a nonprofit organization dedicated to promoting suicide prevention on college campuses, identifies “promoting social connectedness”⁹ as one component of its “Comprehensive Approach to Mental Health Promotion and Suicide Prevention,” a research-based model developed with the Suicide Prevention Resource Center (SPRC).¹⁰ SPRC identifies the social support of friends and a “[s]upportive and inclusive peer and mentor environment” as protective factors that help reduce the likelihood of suicide among college students, and advises that “[a]ctions by campus staff to enhance protective factors are an essential element of a suicide prevention effort.”¹¹

Likewise, the Jed Foundation’s guide to “Campus Mental Health Action Planning,”¹² developed with the Education Development Center, identifies “promot[ing] social networks” as part of its strategy on suicide prevention and cites the opportunity for peer intervention as a means to increase student help-seeking. As the guide notes, “[m]ultiple studies show that students go first to friends, family, or a significant other, much more often than first seeking professional help.” As a result, “[m]any schools have instituted peer counseling or peer education programs to take advantage of students’ willingness to talk to their peers.”

Among on-campus organizers, the nonprofit organization Active Minds uses a peer-to-peer model on college campuses nationwide—including chapters on 12 campuses in Michigan and an unaffiliated chapter at NMU¹³—to encourage students to speak openly about mental health and seek help when needed. Active Minds offers “Be a Friend” resources¹⁴ to prepare students to discuss mental health and suicide with peers at different stages of their process, from noticing warning signs before a friend in crisis receives help to supporting the friend in counseling and

⁹ In 2008, the Centers for Disease Control and Prevention’s National Center for Injury Prevention and Control endorsed the promotion of positive social connectedness as a strategy for suicide prevention. See CENTERS FOR DISEASE CONTROL AND PREVENTION, *Strategic direction for the prevention of suicidal behavior: Promoting individual, family, and community connectedness to prevent suicidal behavior* (2008), <http://www.cdc.gov/violenceprevention/suicide/prevention.html>. Additionally, a 2012 report by faculty from Cornell University, the University of Rochester, and Harvard University similarly argued for a connectedness model of suicide prevention on college campuses. See Janis Whitlock, et al., *Connectedness and suicide prevention in college settings: Directions and implications for practice* (Dec. 2012), <http://www.selfinjury.bctr.cornell.edu/perch/resources/connectedness-suicide-prevent.pdf>. The authors posited, “[T]he concept of connectedness offers a useful framework for explaining variation in risk and resilience pertaining to suicide and for articulating a roadmap for action in suicide prevention on college campuses.” *Id.*

¹⁰ THE JED FOUNDATION, *For Campus Professionals: Comprehensive Approach*, <http://jedfoundation.org/professionals/comprehensive-approach> (last visited Aug. 24, 2016).

¹¹ SUICIDE PREVENTION RESOURCE CENTER, *Suicide Among College and University Students in the United States* (2014), <http://www.sprc.org/sites/default/files/migrate/library/SuicideAmongCollegeStudentsInUS.pdf>

¹² THE JED FOUNDATION & EDUCATION DEVELOPMENT CENTER, INC., *A Guide to Campus Mental Health Action Planning* (2011), https://www.jedfoundation.org/CampusMHAP_Web_final.pdf.

¹³ NORTHERN MICHIGAN UNIVERSITY, *Current Organizations: Student Organization: Active Minds*, <https://www.nmu.edu/organizations/current-organizations?org=438> (last visited Aug. 24, 2016).

¹⁴ ACTIVE MINDS, *Be a Friend*, <http://www.activeminds.org/issues-a-resources/be-a-friend> (last visited Aug. 24, 2016).

during recovery. “Be a Friend” resources also include advice for students supporting a friend on self-care, including maintaining boundaries and their own support systems.

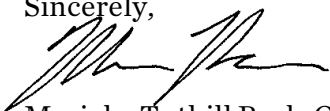
Leaders and activists in the field of collegiate suicide prevention and mental health identify peer support, and by implication peer communication, as an important piece of an integrated prevention program. NMU’s complete ban on student-to-student discussion—far from representing the least speech-restrictive means necessary to achieve its interest in student safety—may instead be detrimental to that goal. In short, this restriction of speech cannot survive First Amendment scrutiny.

FIRE does not suggest that NMU adopt a particular approach to peer support or suicide prevention. Indeed, the Jed Foundation and SPRC advise and offer trainings on community-specific strategic planning around mental health and suicide prevention,¹⁵ and the administration’s task force is undoubtedly involved in such work. But whatever approach NMU does implement, it cannot impose unconstitutional gag orders.

As NMU begins a new academic year, we urge the administration to publicly assure its students it has ended the practice of prohibiting peer discussions of self-harm and that students will not face discipline or any other negative consequences for reaching out to anyone in the campus community.

We respectfully request a response to this letter by September 9, 2016.

Sincerely,



Marieke Tuthill Beck-Coon
Senior Program Officer, Individual Rights Defense Program

cc:

Christine Greer, Assistant Vice President & Dean of Students
Mary Brundage, Associate Dean of Students
Gavin Leach, Vice President of Finance and Administration

¹⁵ See THE JED FOUNDATION, *CampusMHAP: Mental Health Action Planning*, <http://jedfoundation.org/professionals/programs-and-research/campusMHAP-webinars> (last visited Aug. 24, 2016); SUICIDE PREVENTION RESOURCE CENTER, *Strategic Planning*, <http://www.sprc.org/effective-prevention/strategic-planning> (last visited Aug. 24, 2016).