

September 1, 2021

Via First Class Mail and email transmission to irdpdfire@gmail.com

Adam Steinbaugh
Foundation for Individual Rights in Education
510 Walnut Street
Suite 1250
Philadelphia PA 19106

Re: Kaylyn Willis and Umpqua Community College

Dear Mr. Steinbaugh:

Our office represents Umpqua Community College in this matter, and I am responding to the letter that Ms. Tamburro sent to the College dated August 16, 2021. The letter from your organization has been carefully reviewed and considered. The College declines your request to reinstate Ms. Willis to the Nursing Program for the reasons stated below.

First, your recitation of the facts omits significant evidence that was provided to the grievance panel, including the following:

- As noted in the grievance panel decision, Ms. Willis did not, at any time prior to being exited from the program, bring up the New York Times article about the man with MS who had murdered his wife. Instead, in an email to Ms. Myler the day before the exit decision, Ms. Willis stated that her posting was based on “watching a lot of Dateline and 20/20,” and an ongoing joke with her husband that she “knew how to kill him and get away with it.” This reinforced Ms. Myler’s impression that the posting was done as a joke, rather than an intent to demonstrate compassion and empathy as assigned by the instructor. In the exit paperwork given to Ms. Willis, Ms. Myler also referenced the unprofessional posting by Ms. Willis about the “epic lady wedgie.” Ms. Willis told her instructor that this posting was based on a Saturday Night Live skit.
- Ms. Myler testified that she made her decision to expel Ms. Willis based on the cumulative effect of Ms. Willis’ behavior over the course of several months after failing in her first attempt and being readmitted to the Nursing Program. As the grievance panel and President Thatcher noted in their decisions, this included

unprofessional conduct after the first behavioral strike, and before the second behavioral strike, that would have been independent justification for removing Ms. Willis from the program. Rather than exiting Ms. Willis from the program at that time, Ms. Myler gave Ms. Willis yet another chance to demonstrate fitness under the professional standards. Ms. Myler was simultaneously supporting Ms. Willis in her plea to Mercy Hospital that she be allowed to perform her clinicals there, after Ms. Willis was fired from her employment at that institution due to racially insensitive behavior. That permission was granted, at least in part, due to the support from Ms. Myler.

- Despite all the chances Ms. Willis had been given to succeed, and the warnings to behave professionally for the remainder of the academic program, Ms. Myler concluded that Ms. Willis chose to mock the class assignment with her postings. Ms. Myler testified that Ms. Willis had demonstrated an overall pattern of acting like she did not have to comply with the rules of the Nursing Program, which was unacceptable under the professional standards. Ms. Myler believed it was necessary to exit Ms. Willis from the program in order to uphold those professional standards. As the grievance panel's decision noted, Ms. Willis was not removed from the program based on UCC's general misconduct policies, but based on the higher standards of the Nursing Program that Ms. Willis had agreed to abide by in the contract that she signed.

Additionally, we believe that your letter does not accurately portray the relevant case law. The rationale and holding of *Oyama v. University of Hawaii* is not limited in the way you suggest. The Court did not rely on the fact that the plaintiff was a public employee, and in fact rejected the University's defense based on the "public employee speech" theory. The Court then went on to consider the "certification cases" as a separate framework, stating that courts "generally defer to certification decisions based on defined professional standards." The Court relied on prior cases from other federal circuits that involved students in certification programs who were not public employees.

In this case, Ms. Myler testified that the professional certification standards for the College's Nursing Program are governed by a series of state and national nursing codes, and that as the Director of Nursing she was responsible under the Oregon Administrative Rules for determining when a student's behavior failed to meet those standards. These "defined professional standards" were expressly stated in the UCC Student Nursing Handbook, were referenced in the contract that Ms. Willis signed, and were referenced in the exit paperwork prepared by Ms. Myler. There can be no question that Ms. Myler's decision to remove Ms. Willis from the program was based on her professional judgment in carrying out her duty to administer the professional standards of the College's Nursing Program.

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I hope that this letter clarifies any misperceptions you may have regarding the decisions of the grievance panel or President Thatcher. Ms. Willis was given a full opportunity to present her case to the grievance panel and was represented by an attorney in that process. The panel's recommendation to uphold Ms. Myler's decision was lawful and supported by the evidence, as was President Thatcher's decision to adopt the panel's recommendation.

Sincerely,



Dee Rubanoff

cc: Client