



October 20, 2021

Jane C. Conoley
Office of the President
California State University, Long Beach
Brotman Hall BH-300
1250 Bellflower Boulevard
Long Beach, California 90840

URGENT

Sent via U.S. and Electronic Mail (jane.conoley@csulb.edu)

Dear President Conoley:

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.

FIRE is concerned by the institution of disciplinary procedures by California State University, Long Beach (CSULB) against a graduate student, Aqsa Khan, in response to an email criticizing the university's administration. The student's message is clearly protected by the First Amendment, which bars CSULB from punishing protected expression.

I. Khan is Charged with Sending "Abusive" Messages for Email Criticizing Administrators

The following is our understanding of the pertinent facts. We appreciate that you may have additional information to offer and invite you to share it with us. Please find enclosed an executed privacy waiver authorizing you to share information about this matter.

Aqsa Khan is a graduate student enrolled in the Master of Arts in Psychology Research (MAPR) program at CSULB. On September 4, Aqsa sent an email to graduate students, faculty, and administrators through BeachBoard, the online learning platform used by CSULB. The email discouraged students from joining the MAPR program and criticized the CSULB psychology department.¹ In the email, Khan accused the psychology department of treating minority students poorly and criticized the decision to hire a faculty lecturer in light of the

¹ Email from Aqsa Khan sent via BeachBoard to CSULB graduate students and administrators (Sept. 4, 2021, 4:35 PM) (on file with author). A copy of this message is enclosed.

lecturer’s alleged history of misconduct. Khan stated in her email that she previously reached out to human resources and other university administrators with her concerns but felt she had been ignored, leading her to bring her concerns to her fellow students.

On September 5, Khan received an email from Dean of Students Piya Bose, instructing Khan to “stop all communication with students and all university employees” regarding her concerns and to only communicate with employees when related to coursework. Following this message, CSULB notified Khan on September 7 that she was being charged with violating the following university policies because of her BeachBoard email:

Regulation XVI D. 15. d.: Use of computing facilities, campus network, or other resources to interfere with the work of another member of the University community. [“Interference Policy”]

Regulation XVI D. 15. e.: Use of computing facilities and resources to send obscene or intimidating and abusive messages.² [“Abusive Messages Policy”]

The charge letter reiterated that Khan was to cease all communication with university officials and employees about non-coursework matters, other than speaking with the Office of Student Conduct and Ethical Development regarding her case.³

On September 8, Graduate Advisor Diane Roe and other psychology department administrators emailed the department’s graduate students, addressing Khan’s email and stating that “BeachBoard is a university academic resource and is not to be used for commercial or political purposes or to send unsolicited email in any form” and that students who violate this policy will face disciplinary action.⁴

Khan replied to Roe’s email, questioning why Roe and her colleagues did not reach out to Khan directly, to whom she should forward her concerns following the instruction not to discuss the matter with university employees, and if anything will be done to address her original complaints.⁵

On September 9, Khan also responded to the September 5 email from Bose, raising concerns that a CSULB advisor had created a Reddit thread naming Khan and intended to gather more information about her and her complaints.⁶ Bose denied the thread had come from a CSULB advisor. On September 15, following this exchange with Bose, Interim Director of the Office of Student Conduct and Ethical Development Trace Camacho sent Khan an email instructing

² Letter from Tami Williams to Khan (Sept. 7, 2021) (on file with author).

³ *Id.*

⁴ Email from Diane Roe, Sherry Span, Deborah Thien, and Jody Cormack to Khan and other graduate students (Sept. 8, 2021, 3:18 PM) (on file with author).

⁵ Email from Khan to Roe, Span, Thien, and Cormack. (Sept. 15, 2021, 7:38 AM) (on file with author).

⁶ Email from Khan to Piya Bose (Sept. 9, 2021, 8:56 AM) (on file with author).

Khan to stop communicating about her case with university employees and officials outside of the conduct office.⁷

Khan and Camacho exchanged emails over the next few days regarding Khan’s case and Khan’s concerns that her case was being discussed by faculty and administrators outside of the Office of Student Conduct and Ethical Development.⁸ This concern stemmed from Roe’s email to psychology graduate students addressing the case.⁹ Khan also raised concerns about another email on which Khan was initially copied in which Psychology Department Chair Sherry Span commented on Khan’s case and stated Span was “concerned about the level of Aqsa’s paranoia,” and that Khan “will seek a wider audience when the investigation concludes” and “is not satisfied with the results.”¹⁰

On September 29, Khan was found responsible for violating both university policies during a disciplinary conference with Camacho.¹¹ CSULB placed Khan on disciplinary probation for one year following the date of the conference and instructed her to write an “action plan that identifies university offices or resources that [she] will contact in the future if [she has] concerns or complaints regarding faculty, staff, or other students.”¹² Khan has not accepted the resolution, and a disciplinary hearing is scheduled for October 25.¹³

II. The First Amendment Bars CSULB from Punishing Khan for the Speech at Issue

As a public institution, CSULB is bound by the First Amendment, which constrains public universities’ application of disciplinary policies to student expression. CSULB’s policy prohibiting “abusive” messages is facially overbroad, and the university’s application of either cited regulation to punish Khan violates the First Amendment.

A. CSULB is Obligated to Protect the First Amendment Rights of its Students

CSULB is obligated by the Constitution, state law, and university policy to refrain from penalizing protected expression. First, it has long been settled law that the First Amendment is binding on public universities like CSULB.¹⁴ Accordingly, the decisions and actions of a public university, including the pursuit of disciplinary sanctions¹⁵ and maintenance of policies implicating student expression,¹⁶ must be consistent with the First Amendment.

California state law is in accord. Section 66301 of the California Education Code provides, in pertinent part, that an administrator of a California State University institution may not

⁷ Email from Trace Camacho to Khan (Sept. 15, 2021, 9:24 AM) (on file with author).

⁸ Email from Khan to Camacho (Sept. 15, 2021, 11:20 AM) (on file with author).

⁹ Email from Roe, Span, Thien, and Cormack to Khan (Sept. 8, 2021, 3:18 PM) (on file with author).

¹⁰ Email from Span to Khan (Sept. 18, 2021, 2:28 PM) (on file with author).

¹¹ *Resolution Agreement*, California State Univ., Long Beach, Student Conduct and Ethical Development (Sept. 29, 2021) (on file with author).

¹² *Id.*

¹³ Letter from Williams to Khan (Oct. 7, 2021) (on file with author).

¹⁴ *Healy v. James*, 408 U.S. 169, 180 (1972).

¹⁵ *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 667–68 (1973).

¹⁶ *Dambrot v. Central Mich. Univ.*, 55 F.3d 1177 (6th Cir. 1995).

“*make or enforce* a rule subjecting a student to disciplinary sanction solely on the basis of conduct that is speech or other communication that, when engaged in outside a campus of those institutions, is protected from governmental restriction by the First Amendment to the United States Constitution or Section 2 of Article I of the California Constitution.”¹⁷

In addition to its constitutional and statutory obligations, CSULB further supports students’ expressive rights through its institutional commitments to freedom of expression. The university’s student policies maintain that it “supports creative, thoughtful, and respectful discourse where conflicting perspectives are vigorously debated and thoroughly discussed.”¹⁸

B. Criticism of University Officials is Constitutionally Protected Speech

Although Khan’s message criticizing the conduct and decisions of CSULB administrators might not have been well received, its content is protected by the First Amendment.

Criticism of government officials is at the core of the First Amendment’s protection, and this category of officials includes the administrators of public universities like CSULB. As stated by the United States Supreme Court in *Bridges v. California*, “it is a prized American privilege to speak one’s mind, although not always with perfect good taste, on all public institutions.”¹⁹ So central is this ability to criticize officials that the Supreme Court has affirmed that “debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials[.]”²⁰

Against this backdrop, the university’s self-interest in channeling student speech into limited and private grievance procedures—or otherwise penalizing a student as supposedly “obscene or abusive and intimidating” for criticizing her institution and its faculty—fails First Amendment scrutiny.

The university’s complaint that Khan did not cabin her concerns to specific channels and its requirement that she do so in the future is unacceptable. A university cannot require that criticisms of colleagues, faculty, or administrators be confined to private fora. If it could do so, a broad range of student speech on other important concerns would be subject to punishment because it was shared with others—a trusted friend, colleague, journalist, or the public—instead of going through the university’s preferred channel. Funneling student concerns and criticism such that they will only be heard by administrators is incompatible with the First Amendment’s interest in informing the public about the activities of the institutions the law endows.

¹⁷ Educ. Code, § 66301, subd. (a) (emphasis added).

¹⁸ *Freedom of Expression*, CALIFORNIA STATE UNIV., LONG BEACH (last accessed Oct. 15, 2021) <https://www.csulb.edu/student-affairs/free-speech/freedom-of-expression>.

¹⁹ 314 U.S. 252, 270 (1941).

²⁰ *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

C. CSULB's Abusive Messages Policy and Interference Policy Violate the First Amendment

Not only is CSULB's punishment of Khan for protected speech unacceptable, but the university policies used to punish her are incompatible with the First Amendment as well. The two computer use policies Khan was charged with violating threaten students' expressive rights and should be reevaluated.

i. CSULB's Abusive Messages Policy is vague and overbroad.

CSULB's policy barring the "[u]se of computing facilities and resources to send obscene or intimidating and abusive messages" presents constitutional concerns because it fails to provide any definition for what type of expression constitutes "obscene," "intimidating," or "abusive."²¹

First, the regulation is overbroad because "a substantial number of its applications are unconstitutional, judged in relation to" its "plainly legitimate sweep."²² While the First Amendment recognizes exceptions for both obscenity and intimidation, these are narrow exceptions that do not reach any of Khan's speech. Speech is unprotected obscenity only where it "appeals to the prurient interest[. . .] depicts or describes, in a patently offensive way, sexual conduct," and "lacks serious literary, artistic, political, or scientific value."²³ Yet Khan's messages do not depict sexual conduct of any sort. Nor do they meet an exception for "intimidation," a form of true threats—that is, speech intended to place another "in fear of bodily harm or death."²⁴ Khan's speech may be confrontational or unwelcome, but it does not threaten violence.

The application of this policy to Khan's protected speech and lack of clear definitions invites its use against other instances of speech that, while perhaps unpleasant or critical, do not meet these narrow constitutional exceptions. It is not hard to imagine the application of this policy to speech concerning political or religious views that—while constitutionally protected—others may find controversial. Without clear definitions for these terms, a discussion on one's political or religious views on gender and sexuality, for example, could easily be deemed as obscene and intimidating under the policy despite being constitutionally protected due to the nature of these subjects and their controversiality.

Where CSULB reads its policy to reach "abusive" speech which is not otherwise unprotected, it regulates speech amounting to no more than "harsh insulting language."²⁵ However, as the

²¹ *CSULB CAMPUS REGULATIONS 2021 - 22*, CALIFORNIA STATE UNIV., LONG BEACH, <https://www.csulb.edu/student-affairs/campus-rules-and-regulations> (last accessed Oct. 18, 2021).

²² *United States v. Stevens*, 559 U.S. 460, 473 (2010) (quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 (2008)).

²³ *Miller v. California*, 413 U.S. 15, 24 (1973).

²⁴ *Virginia v. Black*, 538 U.S. 343, 360 (2003) (intimidation is a form of a true threat); *see also, e.g., State v. Dawley*, 11 Wn. App. 2d 527, 539 (2019) (striking down law criminalizing "intimidation" of a public servant because it reached more than true threats). California State University regulations addressing intimidating conduct are valid only insofar as they limit "intimidation that threatens or endangers the health or safety of another person. . . ." *O'Brien v. Welty*, 818 F.3d 920, 931 (9th Cir. 2016).

²⁵ *Gooding v. Wilson*, 405 U.S. 518, 525 (1972).

Supreme Court held nearly half a century ago, speech may be harsh and insulting yet remain protected by the First Amendment, and a regulation to the contrary is both vague and overbroad.²⁶

Second, and relatedly, the regulation is unconstitutionally vague because it “fails to give adequate notice to people of ordinary intelligence concerning the conduct it proscribes” or “invites arbitrary and discriminatory enforcement.”²⁷ The policy’s failure to define “abusive” speech to reach only an objective, narrow range of unprotected speech leaves university administrators with unfettered discretion to subject a wide range of student expression to punishment on the basis that it is insulting to others. Yet insulting,²⁸ outrageous,²⁹ or offensive expression remains protected by the First Amendment, as “in public debate we must tolerate insulting, and even outrageous, speech in order to provide adequate ‘breathing space’ to the freedoms protected by the First Amendment.”³⁰ Attempts to prohibit insults or harsh criticism fail to apprise anyone of what speech is or is not permitted.

It is therefore unsurprising, however disappointing, to see this discretion abused to reach speech critical of administrators’ conduct, as in Khan’s case. As mentioned previously, the First Amendment provides robust protections for criticism of public officials, including university administrators. The lack of a constitutionally defensible definition for what kind of speech is “abusive” leaves online discourse critical of the university and its administrators ripe for punishment should students choose to use harsh or unflattering language to raise their concerns.

It is in the interest of the immediate university community, including its students, faculty, and administrators, as well as those beyond it like donors and the public—not to mention constitutionally required—to have open channels to voice criticism of the university and its employees. It is also in the interest of these groups to maintain an academic environment in which students may speak freely about other matters at the core of the First Amendment’s protection without concern they will be punished under the guise that their speech fits into one of the undefined categories of “obscene,” “intimidating,” or “abusive.”

ii. CSULB’s Interference Policy is unconstitutional as applied to Khan’s emails.

CSULB’s interference policy prohibiting the “[u]se of computing facilities, campus network, or other resources to interfere with the work of another” presents further concerns. While the language of this policy appears acceptable on its face as opposed to that of the abusive messages policy, this policy is unconstitutional as applied to Khan’s email. CSULB cannot

²⁶ *Id.*

²⁷ *Schwartzmiller v. Gardner*, 752 F.2d 1341, 1345 (9th Cir. 1984).

²⁸ See, e.g., *Sagan v. Apple Computer*, 874 F.Supp. 1072, 1075 (C.D. Cal. 1994) (poking fun at Carl Sagan by calling him a “Butt-Head Astronomer” was protected speech).

²⁹ *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 54 (1988) (holding parody advertisement depicting a minister in a “drunken incestuous rendezvous with his mother in an outhouse” was protected speech, and noting that the “political cartoon is a weapon of attack, of scorn and ridicule and satire . . . as welcome as a bee sting”).

³⁰ *Snyder v. Phelps*, 562 U.S. 443, 458 (2011) (cleaned up).

apply this policy to punish protected speech like Khan's message, and doing so otherwise violates the First Amendment.

In *Mahanoy Area Sch. Dist. v. B.L.*, the Supreme Court held that public secondary schools have discretion to regulate off-campus student speech where it amounts to a material disruption of school activities.³¹ It is questionable whether the confines of the secondary school standard can even be applied with the same force to restrict speech in the context of higher education. Even if this were the case, however, there is no evidence that Khan's speech caused even the type of "substantial disruption" that would authorize discipline in the context of a public secondary school.³²

Pure expression cannot be penalized on the basis that it requires officials to briefly address criticism, as the administrators' action must be shown to have been "caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint."³³ Yet CSULB does exactly that, threatening punishment for sending messages containing clearly protected speech to a non-receptive audience. Anyone with a working email address can attest that receiving unwanted messages is an expected part of maintaining this form of communication.³⁴ This is readily addressed by ignoring or deleting the messages. While perhaps annoying, receiving unwanted messages rarely rises to the level of materially disrupting one's work, let alone amounting to a substantial disruption. It is illogical for CSULB to maintain a policy that leaves students susceptible to disciplinary action for protected expression that amounts to little more than an inconvenience.

To the contrary, university administrators are employed to address concerns like those raised by Khan. If an administrator can penalize a student on the basis that the administrator felt it necessary to take the time and energy to respond to that criticism, a wide range of student speech is at peril.

III. Conclusion

CSULB cannot impose punishment against a student for voicing criticism of the university's administrators and academic programs. While Khan's message was perhaps inconvenient or unflattering to CSULB administrators, it is protected by the First Amendment.

Furthermore, the two regulations Khan is charged with violating, Regulations XVI D. 15. d. and e., are unconstitutional limitations on student speech and must be revised or rescinded. FIRE encourages CSULB to work with us to revise these regulations. We would be pleased to offer our assistance with this endeavor.

³¹ 141 S. Ct. 2038 at 2045 (2021).

³² *Id.* at 2046–48.

³³ *Id.* at 2048.

³⁴ A Harvard Business Review article estimates the average professional receives 120 emails per day. See Matt Plummer, *How to Spend Way Less Time on Email Every Day*, HARVARD BUS. REV. (Jan. 22, 2019), <https://hbr.org/2019/01/how-to-spend-way-less-time-on-email-every-day>.

Given the urgent nature of this matter, we request receipt of a response to this letter no later than the close of business on Friday, October 22, 2021, confirming that CSULB will not pursue an investigation or disciplinary sanctions in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Anne Marie Tamburro".

Anne Marie Tamburro
Program Officer, Individual Rights Defense Program

Cc: Trace Camacho, Interim Director, Office of Student Conduct and Ethical Development
Piya Bose, Dean of Students
Sherry Span, Department Chair

Encl.

Authorization and Waiver for Release of Personal Information


I, Aqsa Khan, born on , do hereby authorize CSU Long Beach (the "Institution") to release to the Foundation for Individual Rights in Education ("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 in Education, 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:

088940D1DE9F4F6...
Student's Signature

10/20/2021

Date

From: Aqsa Khan

Sent: Saturday, September 4, 2021 4:35 PM

Subject: Psychology Dept tokenizes minorities, hires bully to teach PSY 354, please be informed

For those who are considering applying to the MAPR program, Master of Arts in Psychology Research, I would urge you to reconsider. The Psychology Department here only makes a perfunctory effort to be inclusive in order to deflect any accusations of discrimination.

The program tokenizes minority students by pushing one or two to the forefront in order to appear diverse while doing little to actually help the majority of BIPOC students in any tangible manner, if not outright ignoring and denying them opportunities. In reality, the faculty this department employs and continues to employ have created an inequitable climate in this program. Professors in this program have asked minority students who were born and raised here if English was their first language. They have also accused minority students of plagiarism because they were suspicious of their writing, despite any evidence to the contrary.

This semester, they have hired a student, Sukhman Rekhi, to teach PSY 354 - Psychology of Women, Tuesday/Thursday at 3:30 PM. If you or anyone you know is enrolled in this course, please reconsider and please pass this on so others are aware. The Psychology Department, namely our Department Chair, Sherry Span, has continued to push this student to act as a representative for BIPOC students in our cohort and even in our program, at large, but this person does not represent us. This student was a cohort representative for our class of 2021 who constantly abused her position to bully and spread gossip regarding minority students and faculty from our MAPR program, Master of Arts in Psychology Research.

Our first semester, Rekhi spread around a list of names from our cohort that a professor disliked. This was a ranking of primarily minority students that Rekhi alleges came directly from faculty.

Our second semester, Rekhi used the Black Lives Matter movement to try and install her friend as a diversity representative. She emailed a letter to faculty insisting the cohort would like a diversity representative, but this was not a decision our cohort decided together. Many of us first heard about it from the letter she emailed us and she halted any further discussion among our cohort using her close confidantes to publicly silence BIPOC students via our GroupMe cohort chat group. FYI, our diversity representative candidates were both White, which did not matter much, as Rekhi ended up manipulating the votes in the end.

Our third semester, Rekhi went around telling everyone the professor for statistics is an alcoholic. She repeated this multiple times. She also labelled another student in our program a racist and went around telling both students and faculty about this student's alleged racism, until most everyone had isolated this student.

Rekhi regularly belittles the abilities of students who attended CSUs, often reaching out to students who attended UCs or other Ivies to disparage students who attended CSUs. She attended UC Irvine.

Rekhi went around creating discord between students in our cohort regarding funding allocation, conferences, and other bureaucratic information related to our program that only she was privy to due to her role as a cohort representative.

She also engaged in more juvenile bullying. She would disparage how we looked or how we behaved. If any of you know her, she loves to draw and she would draw students and write awful comments on the side and pass them along for others to add to them. She is 20-something years old, but she behaves like a junior high school bully. This is not someone that should be entrusted to teach, much less have any access to our student records given her conduct and behavior in the past.

I am not sure if the faculty in our department appreciates the personal and private information, she provides them with because I cannot explain why else our department, specifically our department chair, Sherry Span, has not only dismissed any complaints against Rekhi, but has gone to great lengths to protect, and now employ this student who bullied us semester after semester. I am writing to everyone so that people know exactly what is happening and the Psychology Department here can no longer conceal and deflect from her abuse of power. I have reached out to HR to ask them what they intend to do to ensure our privacy is protected, but please inform yourself and your peers so they can try and protect themselves accordingly.

And whether any of the aforementioned conduct is problematic to you or not, I hope you can understand why as paying students we should demand a higher standard from our faculty and even from our future faculty. Rekhi has barely any teaching experience, just finished defending her thesis this past summer and was rejected from every Ph.D. program she applied to this past year. We have had many stellar graduates from our program, but not only did this graduate gossip about many of us, she is barely qualified to teach. If the MAPR program was genuinely committed to diversity, maybe they can start by accepting more than one Black student into the MAPR program or allocating more funding for Black students in our cohort instead of creating performative diversity committees led by White representatives. If you or anyone you know is enrolled in her course, please share this email and let them know so they can decide for themselves.

If you would like to know more, please feel free to contact me. [Here](#) are some hand-picked testimonials from students in our program, including Rekhi.

Please share, thank you