



FIRE

Foundation for Individual
Rights and Expression

January 25, 2023

Marc Tessier-Lavigne
Office of the President
Stanford University
450 Jane Stanford Way, Building 10
Stanford, California 94305

URGENT

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

Dear President Tessier-Lavigne:

The Foundation for Individual Rights and Expression (FIRE),¹ is concerned by Stanford University's reported response² to a Protected Identity Harm (PIH) report filed after a student was photographed reading Adolf Hitler's "Mein Kampf" on campus.³

Reading a book on a college campus should not prompt formal administrative intervention.

Despite Stanford's insistence that its PIH Reporting process "is **not a judicial or investigative process**"⁴ and participation in a resolution is voluntary,⁵ it is unacceptably punitive and chills expressive activity. Being "invited" by administrators with institutional disciplinary authority to engage in a formal reconciliation process to atone for reading a book—one that has been

¹ As you may recall, FIRE is a nonpartisan nonprofit dedicated to defending freedom of speech, 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 Carolyn Stein, *Protected Identity Harm Report filed as screenshot of student reading 'Mein Kampf' circulates*, STANFORD DAILY, (Jan. 22, 2023), <https://stanforddaily.com/2023/01/22/protected-identity-harm-report-filed-as-screenshot-of-student-reading-mein-kampf-circulates/> [<https://perma.cc/8Y95-W9ZZ>].

³ The recitation of facts here reflects our understanding of the pertinent facts and is based on publicly available information. We appreciate that you may have additional information to offer and invite you to share it with us.

⁴ *Protected Identity Harm Reporting: Report an Incident*, STANFORD UNIV., <https://protectedidentityharm.stanford.edu/report-incident> [<https://perma.cc/2J86-5QBW>] (emphasis in original).

⁵ *Protected Identity Harm Reporting: The Process*, STANFORD UNIV., <https://protectedidentityharm.stanford.edu/process> [<https://perma.cc/S3BS-TJFJ>].

previously assigned as required reading for a Stanford class⁶ and is available to check out at Stanford’s library⁷—is not conducive to the campus free speech culture⁸ Stanford deems central to the university’s functions.⁹ Nor is it consistent with California’s “Leonard Law,” which requires Stanford to provide free expression.¹⁰

Despite these obligations, Stanford chills student speech when the response to a PIH report involves notifying an accused student that they may have caused “harm” by merely exercising their rights.

The power differential between university administrators and students is significant. When the Office of Student Affairs, which has disciplinary authority, formally contacts a student about a complaint filed because of their conduct and asks them to engage in a reconciliation process to address alleged harm, that student is unlikely to interpret the request as genuinely voluntary. Rather, such an invitation strongly suggests a student’s actions were problematic, and they may accordingly self-censor.

The PIH system’s “resolution” mechanisms also raise compelled speech and thought reform concerns. Stanford “invites” accused students to meet with their accuser to engage in, for example, “restorative justice, [a] healing circle, [or] mediation to help move towards resolution.”¹¹ Stanford’s “goal” is for students to:¹²

[I]mmediately focus on the resolution practices, but also account for:

- **Acknowledgement of Harm** (and History)
- **Accountability and steps taken towards change** (to the extent possible)
- **Healing/Harm Reduction** (if desired)

⁶ Stein, *supra* note 2.

⁷ *SearchWorks*, STANFORD LIBRARIES, https://searchworks.stanford.edu/?search_field=search&q=mein+kampf.

⁸ *Freedom of Speech & the Fundamental Standard*, STANFORD UNIV., <https://communitystandards.stanford.edu/resources/additional-resources/freedom-speech-fundamental-standard> [<https://perma.cc/2H25-KAGZ>] (“As an institution committed to the exchange of ideas, freedom of speech is core to the mission and academic life of our university”).

⁹ *Academic Freedom and Free Expression*, STANFORD UNIV., <https://freespeech.stanford.edu> [<https://perma.cc/5XKB-VE7J>].

¹⁰ Cal. Educ. Code § 94367, subd. (a) (barring secular, private colleges from making or enforcing any rule that would subject a student to discipline for speech, were it “engaged in outside the campus . . . is protected from governmental restriction by the First Amendment” or the speech protections in the California constitution).

¹¹ *Protected Identity Harm Reporting: The Process*, STANFORD UNIV., <https://protectedidentityharm.stanford.edu/process> [<https://perma.cc/S3BS-TJFJ>].

¹² *Protected Identity Harm Reporting: Resolutions*, STANFORD UNIV., <https://protectedidentityharm.stanford.edu/process/resolutions> [<https://perma.cc/BGN4-FR8G>] (emphasis in original).

This presupposes that students must acknowledge their expression as “harmful” and commit not to cause “harm” in the future. In this case, students will understand that certain protected speech is nonetheless off limits, and they will self-censor.

If Stanford wants to provide both this PIH reporting system and promote a culture of free expression, it should undertake a cursory review of PIH complaints and first determine whether the conduct alleged constitutes protected expression. In such cases, Stanford can offer support to the complainant *without* notifying or involving the accused student.

Of course, student expression is not shielded from every consequence—including criticism by students, faculty, the broader community, or the university itself. Criticism is a form of “more speech,” the preferred remedy to offensive expression.¹³ But Stanford may not wield institutional authority to force compliance with any particular view or sensitivity.

Given the urgent nature of this matter, we request a substantive response to this letter no later than the close of business on Wednesday, February 1, 2023, confirming that Stanford will uphold its culture of free expression and reconsider how it involves students accused of exercising their free expression rights.

Sincerely,



Haley Gluhanich
Program Officer, Campus Rights Advocacy

Cc: Mona Hicks, Senior Associate Vice Provost & Dean of Students
Darrell G. Green, Associate Dean of Students
Rabbi Jessica Kirschner, Chaplain Affiliate
Rabbi Laurie Hahn Tapper, Associate Dean for Religious & Spiritual Life

¹³ *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring).