



# FIRE

Foundation for Individual  
Rights and Expression

February 2, 2023

Andrew Hamilton  
Office of the President  
New York University  
70 Washington Square South  
New York, New York 10012

**URGENT**

*Sent via Electronic Mail (andrew.hamilton@nyu.edu)*

Dear President Hamilton:

FIRE<sup>1</sup> is concerned by New York University's investigation and firing of a graduate student employee for writing "fuck" and "free Palestine" on a discarded "Israel Post Co. Ltd." mailbag found in a recycling bin in the library mailroom where she worked. The student was charged with violating NYU's vandalism policy and its Non-Discrimination and Harassment Policy, on the basis of anti-Semitism, and was reportedly dismissed from her job as one of the library's Arabic translators while the investigation proceeds.<sup>2</sup> Although some may find this expression offensive, it is clearly protected by NYU's strong promises of free expression, which thus bar the university from investigating or issuing a punishment. FIRE calls on NYU to end its investigation of this student immediately and to not pursue disciplinary sanctions in the matter.

Naye Idriss is a graduate student at NYU and worked as a student employee at the university's Bobst Library.<sup>3</sup> In June 2022, while working in the mailroom, Idriss saw a mailbag printed with the words "Israel Post Co. Ltd." discarded in a trash can. Idriss used a red marker to write "fuck" above the word "Israel" and "free Palestine" on another part of the mailbag. When the university's administration found out, an administrator reportedly sent an email to the library supervisors threatening disciplinary action over what they described as an "anti-Israel

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<sup>1</sup> As you may recall from previous correspondence, the Foundation for Individual Rights and Expression is a nonpartisan nonprofit dedicated to defending freedom of speech, expression, and conscience, and other individual rights on campus. You can learn more about our recently expanded mission and activities at [thefire.org](http://thefire.org).

<sup>2</sup> Yezen Saadah, *NYU grad student accused of antisemitism for writing on discarded mailbag*, WASH. SQUARE NEWS (Feb. 1, 2023), <https://nyunews.com/news/2023/02/01/grad-student-anti-semitism-charges>.

<sup>3</sup> The following is our understanding of the pertinent facts, which is based on public information. We appreciate that you may have additional information to offer and invite you to share it with us.

sentiment,” and referred the incident to the campus safety office.<sup>4</sup> Idriss and two other workers were fired. Her two coworkers were later rehired, but Idriss was not. She was subsequently charged with violating the university’s vandalism policy and non-discrimination policy for writing a subjectively anti-Semitic message on the discarded mailbag. Idriss reportedly remains under investigation for vandalism and is also in legal proceedings with the university, her union representatives, and attorneys regarding the circumstances of her termination.<sup>5</sup>

NYU’s investigation, punishment, and termination of Idriss are improper given that NYU policy explicitly guarantees students the right to free expression and may not punish them for exercising that right. The policy establishes NYU as “a community where the means of seeking to establish truth are open discussion and free discourse.”<sup>6</sup> It further asserts that the university “thrives on debate and dissent, which must be protected as a matter of academic freedom within the University, quite apart from the question of constitutional rights.” Additionally, it recognizes “that a critically engaged, activist student body contributes to NYU’s academic mission” and that “[f]ree inquiry, free expression, and free association enhances academic freedom and intellectual engagement.” Students reading these clear commitments, would feel confident expressing even the most controversial views in creative ways on campus.

As a threshold matter, NYU should drop the vandalism charge against Idriss as garbage, by its nature, belongs to no one and cannot therefore be vandalized.<sup>7</sup> Idriss elected to creatively upcycle a piece of trash into a protest sign, and NYU’s expansive free expression policy protects her message no matter the medium.

Any commitment to free speech, particularly one as unequivocal as NYU’s, presupposes that some people on campus may take offense to some expressed viewpoints, as the “bedrock principle underlying” free speech is that it may not be limited “simply because society finds the idea itself offensive or disagreeable[.]”<sup>8</sup> This principle is particularly important in higher education, where the exchange of views may sometimes be caustic, provocative, or inflammatory. The Supreme Court has nonetheless held, that “the mere dissemination of ideas,” however “offensive” to others, “may not be shut off in the name alone of ‘conventions of decency.’”<sup>9</sup>

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<sup>4</sup> Nora Barrows-Friedman, *NYU student punished for writing “fuck” on Israeli mail bag*, ELEC. INTIFADA (Jan. 27, 2023), <https://electronicintifada.net/blogs/nora-barrows-friedman/nyu-student-punished-writing-fuck-israeli-mail-bag>.

<sup>5</sup> Yezen Saadah, *NYU grad student accused of antisemitism for writing on discarded mailbag*, WASH. SQUARE NEWS (Feb. 1, 2023), <https://nyunews.com/news/2023/02/01/grad-student-anti-semitism-charges>.

<sup>6</sup> *Academic Freedom, Demonstration, and Protest*, UNIV. STUDENT CONDUCT POLICY, N.Y. UNIV., <https://www.nyu.edu/about/policies-guidelines-compliance/policies-and-guidelines/university-student-conduct-policy.html> [<https://perma.cc/YT5G-VL8R>].

<sup>7</sup> *California v. Greenwood*, 486 U.S. 35, 40 (1988). (Court said contents of garbage “are readily accessible to animals, children, scavengers, snoops, and other members of the public”).

<sup>8</sup> *Snyder v. Phelps*, 562 U.S. 443, 458 (2011), citing *Texas v. Johnson*, 491 U.S. 397, 414 (1989).

<sup>9</sup> *Id.*

This calculus does not vary for speech that “concern[s] sensitive topics” like the highly debated Israeli-Palestinian conflict, “where the risk of conflict and insult is high.”<sup>10</sup> While FIRE is aware of NYU’s 2020 settlement agreement with the Department of Education’s Office of Civil Rights (OCR) regarding NYU’s policy on discrimination on the basis of shared ancestry or ethnicity, that agreement does not require the university to investigate protected expression. OCR itself has made clear that a university’s important legal obligations to address discriminatory harassment do not obligate it to censor expression absent “something beyond the mere expression of views, words, symbols or thoughts” that others find offensive.<sup>11</sup> OCR has also been clear that universities cannot claim that protected speech constitutes discriminatory harassment which “must include something beyond the mere expression of views, words, symbols or thoughts that some person finds offensive.”<sup>12</sup>

NYU’s harassment policy also explicitly states that it must be interpreted in light of the principles and related policies and procedures of free inquiry, free expression, and free association.<sup>13</sup> It’s clear that the student’s actions here do not approach the Supreme Court’s definition of student-on-student (or peer) harassment, which requires conduct that is unwelcome, discriminatory on the basis of a protected status, and “so severe, pervasive, and objectively offensive that it can be said to deprive the [student victim] of access to the educational opportunities or benefits provided by the school.”<sup>14</sup> This almost uniformly requires repetitive, clearly targeted conduct.

NYU also cannot investigate students for protected speech even if those investigations ultimately resolve in their favor. The question is not whether formal punishment is meted out, but whether the institution’s actions in response “would chill or silence a person of ordinary firmness” from expressing themselves in the future.”<sup>15</sup>

Although some may have found Idriss’ message offensive, it is fully protected by NYU’s free speech promises. Accordingly, NYU should drop all charges against her arising from her expression and should restore her to her staff and student positions with good standing.

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<sup>10</sup> *Rodriguez v. Maricopa Cnty. Comm. Coll. Dist.*, 605 F.3d 703, 708 (9th Cir. 2009).

<sup>11</sup> 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/B46T-P75J>].

<sup>12</sup> *Id.*

<sup>13</sup> *Non-Discrimination and Anti-Harassment Policy and Complaint Procedures for Students*, N.Y. UNIV., <https://www.nyu.edu/about/policies-guidelines-compliance/policies-and-guidelines/non-discrimination-and-anti-harassment-policy-and-complaint-proc.html> [<https://perma.cc/JMG9-GLCP>].

<sup>14</sup> *Davis v. Monroe Cnty Bd. of Educ.*, 526 U.S. 629, 650 (1999).

<sup>15</sup> *Mendocino Envtl. Ctr. v. Mendocino Cty.*, 192 F.3d 1283, 1300 (9th Cir. 1999).

Given the urgent nature of this matter, we request a substantive response to this letter no later than the close of business on Thursday, February 16, 2023, confirming that NYU will immediately end its investigation of Idriss' protected expression and not pursue any disciplinary sanctions in this matter.

Sincerely,



Amanda Nordstrom  
Program Officer, Campus Rights Advocacy

Cc: John Beckman, Senior Vice President for Public Affairs and Strategic Communications