



FIRE

Foundation for Individual
Rights and Expression

October 16, 2023

Troy A. McKenzie
Dean of Students
New York University School of Law
Furman Hall
245 Sullivan Street, LC-20
New York, New York 10012

URGENT

Sent via U.S. Mail and Electronic Mail (mckenzie@exchange.law.nyu.edu)

Dear Dean McKenzie:

FIRE¹ is deeply concerned by New York University School of Law's recent suggestion to *The New York Times* that it may be investigating student Ryna Workman for their protected political speech amid intense public and campuswide criticism for expressing views about the Israeli-Palestinian conflict.²

“For legal reasons,” NYU Law told *The Times* Wednesday, “we cannot comment on the specifics of any current student who may be under investigation. Speaking generally, all complaints of bias and/or discriminatory behavior are investigated thoroughly and in accordance with federal, state, and local guidelines, and the appropriate disciplinary action follows the outcome of that process.”³

This raises concerns because, where a bias or harassment complaint seems to allege no more than protected expression, the correct approach, under NYU's clear free expression promises,⁴

¹ 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.

² Vimal Patel and Anemona Hartocollis, *N.Y.U. Law Student Sends Anti-Israel Message and Loses a Job Offer*, *NEW YORK TIMES*, (Oct. 11, 2023) <https://www.nytimes.com/2023/10/11/us/nyu-law-harvard-hamas-israel.html>. Workman uses they/them pronouns. As our recitation of the pertinent facts here reflects public reporting, we welcome any additional information that would inform our analysis, and invite you to share it with us.

³ *Id.*

⁴ See Academic Freedom and Protest, UNIV. STUDENT CONDUCT POLICY, NEW YORK UNIV. (Aug. 16, 2021), <https://www.nyu.edu/about/policies-guidelines-compliance/policies-and-guidelines/university-student-conduct-policy.html>. NYU Law is a school within NYU and thus must comply with the university's policies, including its commitments guaranteeing students expressive freedoms.

is to have administrators conduct a cursory, internal review. If that review confirms the submitter complains of solely protected expression, NYU can promptly close the case without ever notifying the accused student, while at the same time offering support to the aggrieved complainant. To be sure, NYU may face certain important obligations to investigate discrimination, harassment, threats, or other misconduct on campus—but it should not publicly launch investigations where allegations are comprised of nothing more than pure political expression.

That is because even investigations that ultimately resolve in favor of the accused can deeply chill campus speech. The inquiry in such a case is not whether formal punishment is ultimately imposed, but whether the university's actions "chill a person of ordinary firmness" from engaging in future protected activity.⁵ Consequently, NYU's public reference to Workman's speech as potential misconduct sends a chilling message not only to Workman, but to all students and faculty that they may face disciplinary action for engaging in core political expression. Notably, there is no suggestion in any of the public reporting that Workman engaged in any misconduct whatsoever.

Speech that may prompt a bias or harassment complaint often does not, in fact, come close to meeting the high legal bar for discriminatory harassment, which The U.S. Department of Education's Office for Civil Rights has said must include "something beyond the mere expression of views, words, symbols or thoughts that some person finds offensive."⁶ Likewise, in *Davis v. Monroe County Board of Education*, the Supreme Court set forth a clear definition of student-on-student (or peer) harassment.⁷ For student conduct (including expression) to constitute actionable harassment, it must be (1) unwelcome, (2) discriminatory on the basis of a protected status, and (3) "so severe, pervasive, and objectively offensive that it can be said to deprive the victim[] of access to the educational opportunities or benefits provided by the school."⁸

Workman's reported statements, conversely, are the very sort of passionate, core political speech one might expect on a college campus. They are wholly protected even if other students found them offensive or even hateful. In the event such speech nonetheless prompts a bias report, it is incumbent on NYU Law to undertake a cursory review of the complaint before launching a potentially meritless disciplinary proceeding.

Investigations carrying the threat of disciplinary action would particularly chill law students of ordinary firmness, who frequently must disclose any disciplinary action when they apply to legal jobs or the bar. These students face additional incentives to self-censor rather than risk any kind of misconduct investigation that could forestall their legal careers. Yet law students, especially, must be free to debate the legal issues of the day without fearing institutional reprisal for engaging in protected speech.

⁵ *Hous. Cmty. Coll. Sys. v. Wilson*, 212 L. Ed. 2d 303, 311 (2022).

⁶ 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/84RK-NFXR>].

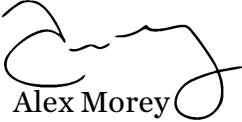
⁷ 526 U.S. 629 (1999).

⁸ *Id.* at 650.

At this moment of intense disagreement on our nation's campuses, students who care about the conflict in the Middle East are sharing their views with the passion and urgency a humanitarian crisis of this scale demands. NYU and NYU Law must act now with equal urgency to reassure Workman—and all students and faculty—that they will not face investigation for exercising their right to do so.

We request a substantive response to this letter no later than close of business on October 20, 2023, confirming NYU will publicly recommit to honoring its clear free speech commitments.

Sincerely,



Alex Morey
Director, Campus Rights Advocacy

Cc: Linda G. Mills, President, New York University
Aisha Oliver-Staley, Senior Vice President and General Counsel, New York University