



# FIRE

Foundation for Individual  
Rights and Expression

November 13, 2023

Lester Edgardo Sandres Rápalo  
Office of the President  
Rockland Community College  
Brucker Hall, Room 6205  
145 College Road  
Suffern, New York 10901

**URGENT**

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

Dear President Rápalo:

FIRE<sup>1</sup> is alarmed by Rockland Community College's escalating punishment of student Madeline Ward for her pro-Palestinian expression. You failed to respond to our enclosed November 1 letter raising concerns about RCC's discipline for her nondisruptive political speech. Now, RCC has suspended Ward until the fall 2024 semester for expression protected by the First Amendment. This suspension is a stark departure from RCC's constitutional obligations to uphold student free speech and due process rights and must be rescinded.

On November 2, Interim Coordinator of Judicial Affairs Steven Marks temporarily suspended Ward for unspecified "reports of alleged violations of the Student Code of Conduct that our office received," banning her from campus on threat of arrest.<sup>2</sup> He then charged Ward with "Discriminatory/Harassing Behavior," "Endangering Conduct," and "Intimidation" and summoned her to a disciplinary hearing.<sup>3</sup> RCC refused to inform Ward of the factual allegations supporting these charges before her hearing,<sup>4</sup> despite her repeated requests.

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<sup>1</sup> As explained in prior correspondence, the Foundation for Individual Rights and Expression (FIRE) is a nonpartisan nonprofit that is dedicated to defending freedom of 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](http://thefire.org).

<sup>2</sup> Letter from Steven Marks, Interim Coordinator of Judicial Affairs, to Madeline Ward, student (Nov. 2, 2023) (on file with author). The recitation here reflects our understanding of the pertinent facts. We appreciate that you may have additional information to offer and invite you to share it with us. To these ends, please find enclosed an executed privacy waiver authorizing you to share information about this matter.

<sup>3</sup> Letter from Marks to Ward (Nov. 3, 2023) (on file with author).

<sup>4</sup> *Id.*

At the November 7 hearing, Ward repeatedly asked Assistant Director of Judicial and Veterans Affairs Jonathan Barnwell, the RCC administrator presiding over the hearing, for the factual allegations against her. Barnwell mentioned her shouting, “from the river to the sea, Palestine will be free” and “Jews for Palestine” at the Unity Gathering event,<sup>5</sup> and her posting of publicly available faculty email addresses online. He criticized her pro-Palestinian advocacy and blamed her for the vitriol directed at faculty by unknown third parties. At no point during the hearing did any administrator describe how Ward violated any college policies.

Barnwell then found Ward responsible for all charges and suspended her until the fall 2024 semester.<sup>6</sup> He warned Ward that “continued posting of any college-related information may lead to separate legal action.”<sup>7</sup> Barnwell’s suspension notice did not contain any factual allegations to support this disciplinary determination.<sup>8</sup> Ward appealed the suspension, and the appeals hearing is scheduled for November 16.

RCC’s suspension of Ward for political speech and its failure to provide her a meaningful opportunity to contest the charges constitute a callous disregard for students’ constitutional rights. First, as explained in our November 1 letter, public colleges bound by the First Amendment cannot punish students for political advocacy, even when that speech offends others.<sup>9</sup> This well-established First Amendment principle applies in full to Ward’s words at the Unity Gathering, her pro-Palestinian advocacy on social media, and any other pro-Palestinian expression unpalatable to RCC administrators. RCC’s failure to apprise Ward of any allegations that remotely approach punishable harassing or threatening conduct suggests its punishment is based entirely on her clearly protected political speech.<sup>10</sup>

Second, RCC’s warning that Ward must refrain from posting “college-related information” is an overbroad<sup>11</sup> content-based ban on a wide array of protected speech.<sup>12</sup> As a government institution, RCC-related information constitutes speech about public affairs that the college

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<sup>5</sup> The details of this event are described in our enclosed November 1 letter.

<sup>6</sup> Letter from Jonathan Barnwell, Assistant Director of Judicial and Veterans Affairs, to Ward (Nov. 7, 2023) (on file with author).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *E.g., Mills v. Alabama*, 384 U.S. 214, 218 (1966) (“Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose ... was to protect the free discussion of governmental affairs.”).

<sup>10</sup> The Supreme Court established a strict definition of peer harassment in the educational setting: expression must be unwelcome, discriminatory on the basis of protected status, and “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.” *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 650 (1999). A “true threat” is a statement through which “the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.” *Virginia v. Black*, 538 U.S. 343, 359 (2003). Ward’s expression does not remotely approach either standard.

<sup>11</sup> A speech restrictive regulation is overbroad “if it sweeps within its ambit a substantial amount of protected speech along with that which it may legitimately regulate.” *Doe v. Univ. of Mich.*, 721 F. Supp. 852, 864 (E.D. Mich. 1989); see also *United States v. Stevens*, 559 U.S. 460, 473 (2010) (a law is overbroad in the First Amendment if “a substantial number of its applications are unconstitutional, judged in relation to the statute’s plainly legitimate sweep.”) (internal quotations and citations omitted).

<sup>12</sup> See, e.g., *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2226 (2015) (content-based restrictions “are presumptively unconstitutional” and must be narrowly tailored to furthering a compelling government interest).

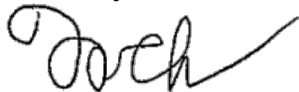
cannot punish students for posting online.<sup>13</sup> Even if limited to reposting information about RCC or its administrators, faculty, or staff that is already available publicly elsewhere, this ban on protected speech is substantially overbroad judged in relation to its legitimate purpose (if any) and must be revoked.

Third, RCC may not hold Ward accountable for the actions of third parties unknown to her. Barnwell’s determination that Ward is responsible for expression directed toward faculty because she posted their email addresses online—which are already available on RCC’s website<sup>14</sup>—violates the First Amendment’s prohibition on the government punishing an individual for others’ protected expression.<sup>15</sup>

Finally, RCC’s refusal to provide the factual allegations against Ward until her hearing violates its obligation to provide her timely notice and a reasonable opportunity to defend herself. It is an “elementary and fundamental requirement of due process” that adequate notice must “apprise interested parties of the pendency of the action and afford them an opportunity to present their objection.”<sup>16</sup> Public educational institutions must inform an accused student in a timely manner “what he is accused of doing and what the basis of the accusation is.”<sup>17</sup> RCC only provided Ward the factual allegations at the disciplinary hearing, giving her no time to gather witnesses, prepare a defense, or meaningfully contest the charges. RCC’s violation of Ward’s core right to defend herself undermines the veracity of its disciplinary determination.<sup>18</sup>

Given RCC’s ongoing and egregious violation of Ward’s rights, we request a substantive response to this letter no later than the close of business on November 17, 2023, confirming RCC will rescind its punishment of Ward.

Sincerely,



Zachary Greenberg  
Senior Program Officer, Campus Rights Advocacy

Cc: Melissa L. Roy, Chief Diversity Officer  
Bart Grachan, Vice President for Enrollment Management and Student Affairs  
Jonathan Barnwell, Assistant Director of Judicial and Veterans Affairs  
Steven Marks, Interim Coordinator of Judicial Affairs

Encl.

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<sup>13</sup> *Mills*, 384 U.S. at 218.

<sup>14</sup> *Full-Time Faculty Directory*, ROCKLAND CMTY. COLL., <https://sunyrockland.edu/about/contact/faculty> [<https://perma.cc/AEK3-PZ8Y>].

<sup>15</sup> See *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 932 (1982) (“[G]uilt by association is a philosophy alien to the traditions of a free society and the First Amendment itself ....”) (internal citations omitted).

<sup>16</sup> *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

<sup>17</sup> *E.g.*, *Goss v. Lopez*, 419 U.S. 565, 582 (1975).

<sup>18</sup> See *Mathews v. Eldridge*, 424 U.S. 319, 344 (1976) (“[D]ue process rules are shaped by the risk of error inherent in the truthfinding process as applied to the generality of cases, not the rare exceptions.”).



# FIRE

Foundation for Individual  
Rights and Expression

November 1, 2023

Lester Edgardo Sandres Rápalo  
Office of the President  
Rockland Community College  
Brucker Hall, Room 6205  
145 College Road  
Suffern, New York 10901

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

Dear President Rápalo:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,<sup>1</sup> is concerned by Rockland Community College's punishment of student Madeline Ward for her pro-Palestinian expression. We acknowledge that our concerns arise at a time when emotions are running high between those with opposing views on the Israeli-Palestinian conflict, but Ward's political, nondisruptive speech is fully protected by the First Amendment, which bars RCC from disciplining her. Accordingly, we call on RCC to rescind all punishment imposed on Ward and commit to protecting students' free speech rights.

On October 12, Hillel of Rockland, together with RCC's Hillel Club and Antidiscrimination Club, hosted a Unity Gathering at the Ellipse Technology Center.<sup>2</sup> During the event, Ward entered the center, stood by the door, and shouted, "from the river to the sea, Palestine will be free" and "Jews for Palestine," and then walked out.<sup>3</sup> She did not block the door or prevent other students from attending the event.

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<sup>1</sup> For more than 20 years, FIRE has defended freedom of 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](https://thefire.org).

<sup>2</sup> Stephanie Dixon, *Unity Gathering in Support of Israel*, HUDSON VALLEY NEWS (Oct. 12, 2023), <https://hudsonvalley.town.news/g/nanuet-ny/e/219280/unity-gathering-support-israel>. The recitation here reflects our understanding of the pertinent facts, based on public information. We appreciate that you may have additional information to offer and invite you to share it with us. To these ends, please find enclosed an executed privacy waiver authorizing you to share information about this matter.

<sup>3</sup> Alex Kane, *A "McCarthyite Backlash" Against Pro-Palestine Speech*, JEWISH CURRENTS (Oct. 20, 2023), <https://jewishcurrents.org/a-mccarthyite-backlash-against-pro-palestine-speech>. Affording to Ward,

Later that day, Executive Director of Student Engagement and College Life LaToya Blount emailed Ward to notify her she was charged with, among other violations, “Disruptive Behavior,” defined by the RCC Code of Student Conduct as:<sup>4</sup>

Intentionally, knowingly, or recklessly engaging in disruptive behavior that interferes with the educational or administrative operation of the College. Such conduct includes, but is not limited to: conduct which disrupts the peaceable classroom, office or administrative environment, conduct that disrupts any College-sponsored activity (the blocking of an entrance, exit, or access to any College facility, area, road, stairway, and/or walkway); behavior that infringes upon the rights of other members of the College community; and leading or inciting others to disrupt scheduled and/or normal activities on College premises.

Ward replied to Blount by email stating “FREE PALESTINE,” to which Blount replied, “This is a **firm warning** that your email is inappropriate” and that Blount would “not entertain any further correspondence” until a disciplinary meeting scheduled for October 19.<sup>5</sup>

On October 23, RCC found Ward responsible for disruptive behavior and imposed a written warning and a requirement that she complete a reflection paper about complying with college policies.<sup>6</sup> At no point during the process did RCC demonstrate how Ward interfered with or disrupted the Unity Gathering. Ward’s appeal of this determination is pending.

Ward’s speech is protected by the First Amendment and should not have prompted disciplinary proceedings to begin with, much less a finding of responsibility or subsequent punishment for her speech. Notably, Ward’s fleeting commentary neither disrupted the Unity Gathering nor ran afoul of any RCC policy.<sup>7</sup> Public educational institutions must show “material and substantial interference” with events or operations to punish students for disruptive

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campus police officers followed her away from the event, asked for her student ID and driver’s license, and told her she could be charged with a crime for her speech.

<sup>4</sup> Letter from LaToya Blount, Executive Director of Student Engagement and College Life, to Madeline Ward, student (Oct. 12, 2023) (on file with author); *Student Code of Conduct*, ROCKLAND CMTY. COLL. (rev. Aug. 27, 2015), <https://sunyrockland.edu/about/college-policies/student-services-policies/student-code-of-conduct> [<https://perma.cc/87S8-F2FK>].

<sup>5</sup> Email thread between Ward and Blount (Oct. 15, 2023) (emphasis in original) (on file with author).

<sup>6</sup> Letter from Blount to Ward (Oct. 23, 2023) (on file with author).

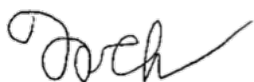
<sup>7</sup> It has long been settled law that the First Amendment binds public college like RCC, such that its actions and decisions—including imposition of disciplinary sanctions—must comply with the First Amendment. *Healy v. James*, 408 U.S. 169, 180 (1972) (“[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, ‘the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.’”) (internal citation omitted); see also *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 667–68 (1973).

expression.<sup>8</sup> This reflects the First Amendment’s robust protection for uncivil, offensive, and even hateful speech.<sup>9</sup> This includes Ward’s advocacy for Palestinians.<sup>10</sup>

RCC has put forth no evidence of any disruption, let alone a severe and material disruption necessary to justify punishing Ward.<sup>11</sup> Further, Blount’s hostile reaction to Ward’s two-word response email and warning that her protected political speech is “inappropriate” suggests RCC based its punishment in part on her pro-Palestinian viewpoints. Such impermissible viewpoint discrimination has no place at a public college bound by the First Amendment.<sup>12</sup> Considering the absence of an actual disruption, Ward’s words do not rise to “disruptive behavior” under RCC’s policies and cannot form the basis of any punishment by the college.

FIRE writes privately to urge your administration to rectify this undue violation of Ward’s fundamental First Amendment rights. We request a substantive response to this letter no later than close of business November 8, confirming RCC has rescinded its punishment of Ward and will commit to upholding students’ free speech rights.

Sincerely,



Zachary Greenberg  
Senior Program Officer, Campus Rights Advocacy

Cc: LaToya Blount, Executive Director of Student Engagement and College Life

Encl.

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<sup>8</sup> *Tinker v. Des Moines*, 393 U.S. 503, 512 (1969) (quoting *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967)). In the college context, the protections described by the Court in *Tinker* are the floor for student expressive rights, not the ceiling. Even under *Tinker*’s disruption standard, Ward’s words do not rise to level of a punishable disruption.

<sup>9</sup> *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (burning the American flag is protected by the First Amendment, the “bedrock principle underlying” the holding being that government actors “may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable”); see also *Snyder v. Phelps*, 562 U.S. 443, 448, 461 (2011) (“As a Nation we have chosen ... to protect even hurtful speech on public issues to ensure that we do not stifle public debate.”); cf. , *Tinker*, 393 U.S. at 508 (“undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression”).

<sup>10</sup> E.g., *Mills v. Alabama*, 384 U.S. 214, 218 (1966) (“Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose ... was to protect the free discussion of governmental affairs.”).

<sup>11</sup> To the extent Ward disrupted the event at all, RCC must disclose these relevant facts per its due process obligation to provide students adequate notice of alleged misconduct and a meaningful opportunity the contest charges. *Student Code of Conduct*, *supra* note 4 (“Conduct proceedings are governed by ... the due process provisions of the United States and New York ... Constitutions”).

<sup>12</sup> *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995) (“Viewpoint discrimination is thus an egregious form” of censorship, and authorities “must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.”).

## **Authorization and Waiver for Release of Personal Information and Request for FERPA Records**

This is an authorization for the release of records and information, as well as a request for records, under the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and its applicable regulations (particularly 34 CFR § 99.30).

I, Madeline ward, born on 12/31/2002, do hereby authorize SUNY Rockland Community College (the "Institution") to release to the Foundation for Individual Rights and Expression ("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).

**Records requested under FERPA:** I request access to and a copy of all documents defined as my "education records" under 34 CFR § 99.3, including without limitation:

- A complete copy of any files kept in my name in any and all university offices;
- any emails, notes, memoranda, video, audio, or other material maintained by any school employee in which I am personally identifiable;
- any and all phone, medical or other records in which I am personally identifiable; and
- the log of requests for and disclosures of my education records, as required by 34 CFR § 99.32(a).

**Records requested under state public records law:** To the extent the applicable public records law would require a faster response, a more comprehensive response, or production of copies of records:

- I request, pursuant to the applicable state public records law, copies of all records that would be available for my inspection under FERPA;
- To the extent the public records law allows disclosure of responsive records, I request that such records be produced in an electronic format, preferably by email.

**Fees:** I agree to pay any reasonable copying and postage fees of not more than \$20. If the cost would be greater than this amount, please notify me. Bear in mind, however, that FERPA prohibits the imposition of a fee to search or retrieve records (34 CFR § 99.11).

**Request for Privilege Log:** If any otherwise responsive documents are withheld on the basis that they are privileged or fall within a statutory exemption, please provide a privilege log setting forth (1) the subject matter of the document; (2) the person(s) who sent and received the document; (3) the date the document was created or sent; and (4) the basis on which it is the document is withheld.

**Request for Redaction Log:** If any portion of responsive documents must be redacted, please provide a written explanation for the redaction including a reference to the statutory exemption permitting such redaction. Additionally, please provide all segregable parts of redacted materials.


Per 34 CFR § 99.10(b), these records must be made available within **45 days**.

I request that the records be sent to me via email at maddyeward@icloud.com and to FOIA@thefire.org.

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 and Expression, 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:  
  
707F5707B5D143B...

10/31/2023

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Student's Signature

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Date