



**Foundation for Individual Rights in Education**

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May 23, 2008

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Dear President Hennessy:

As you can see from our list of Directors and Board of Advisors, FIRE unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals from across the political and ideological spectrum on behalf of liberty, legal equality, freedom of religion, due process, freedom of speech, and academic freedom on America's college campuses. Our website, [www.thefire.org](http://www.thefire.org), will give you a greater sense of our identity and activities.

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FIRE is concerned about the threat to the freedoms of expression and conscience presented by the Stanford School of Education's treatment of accepted student Michele Kerr. By appearing to condition Kerr's admission to Stanford School of Education's Stanford Teacher Education Program (STEP) upon her ability to refrain from public criticism of STEP's curriculum, Stanford risks violating both its legal obligation to protect student speech under California's Leonard Law and its own policies regarding expressive conduct. By seemingly rendering Kerr's admission contingent upon her agreement with an ideological and politicized conception of a teacher's role in the classroom, Stanford impermissibly intrudes upon Kerr's right to hold opinions contrary to those of Stanford's and STEP's leadership.

This is our understanding of the facts. Please inform us if you believe we are in error.

In early March, Michele Kerr received an offer of admission to Stanford School of Education's STEP program. On March 14, Kerr attended an open house for admitted students. During the open house, Kerr was asked whether she would be accepting Stanford's offer of admission. In reply, Kerr expressed concerns about the cost of tuition. Additionally, Kerr stated that while she did not entirely agree

with what she perceived to be STEP's "progressive" approach to education, she was very willing to learn more about STEP's education philosophy and was keeping an open mind. Finally, Kerr explicitly stated that she "had no intention of making waves."

A month later, STEP Director Dr. Rachel Lotan contacted Kerr and asked her to come in for a meeting, ostensibly to discuss a question Kerr had asked regarding student teaching. However, at the meeting, Lotan quickly answered Kerr's question, then proceeded to spend approximately forty-five minutes criticizing the hesitation about STEP's philosophy which Kerr had expressed at the open house. Kerr interpreted the lengthy session as an implicit warning not to attend Stanford, and she left the meeting in tears. Concerned about her offer of admission and the possibility of retaliation if she accepted, Kerr contacted University Ombuds David Arnot Rasch. Rasch told Kerr not to be concerned by her conversation with Lotan, that the offer of admission was binding, and that Kerr should accept the offer if she so desired. After extensive consideration, Kerr accepted Stanford's offer on April 15, forsaking an offer from the University of California–Santa Cruz.

The following day, Kerr was contacted again via e-mail by Lotan, who expressed concern about Kerr's "potential" participation in STEP, despite the fact that Kerr had already accepted Stanford's offer. Lotan demanded that Kerr meet with her again, telling Kerr that she needed to "ensure that [Kerr's] potential participation in STEP is productive and successful." In response, Kerr replied to Lotan on April 22, telling her that she was unable to attend another meeting but looked forward to starting at Stanford and meeting with Lotan once school started. Apparently unsatisfied, Lotan responded again, insisting that Kerr must meet with her.

Shortly after receiving Lotan's response, Kerr was the unintended recipient of an e-mail from School of Education Student Services Administrator Ruth Ann Costanzo, who wrote:

Rachel,

I really can't believe this response! It looks and sounds worse on email!!!  
We do need to strategize. Are you forwarding her response to the lawyer? I won't tell you what Michael said!!!!

RA

This letter indicated to Kerr that Lotan had already consulted a lawyer regarding her admission and felt there was a need to "strategize." (It is unclear to Kerr who "Michael" is and what his involvement with her career at Stanford might be.) Understandably concerned, Kerr forwarded the correspondence to Rasch and asked if there was a chance that Stanford could rescind its offer, which Kerr had already accepted. In his response, Rasch asked Kerr to attend a meeting with Lotan, which Rasch would mediate. Kerr accepted, confirming that it was understood by Lotan that Kerr would be attending Stanford and that Kerr did not need to prove herself to Lotan.

Kerr attended the meeting with Rasch and Lotan on May 1 after Rasch indicated that Lotan had agreed to these terms. Kerr detailed the sequence of prior events from her perspective. She stressed that her primary aim was to become a teacher, that she had no interest in causing

trouble, and that she was excited about attending Stanford starting this summer. Lotan followed, offering a recollection of the events that closely mirrored Kerr's. But Lotan also indicated that "at some point" after their initial meeting, she sought legal advice regarding the possibility of rescinding Kerr's admission. Lotan said that "unfortunately," she was informed that due to Kerr's strengths as an applicant, rescission would be legally untenable. Lotan also indicated that she had spoken to a lawyer again following Kerr's letter after the meeting.

Further, Lotan told Kerr that she had been monitoring criticisms of Stanford made by Kerr on an online forum. Lotan said that she had been very upset by Kerr's online comments, which included referring to specific portions of Stanford's program as "ludicrous" and "idiocy," as well as explicitly indicating that Kerr "fundamentally and profoundly disagree[d]" with parts of STEP's approach. Lotan told Kerr that she believed these statements differed profoundly from those made in her application. Kerr responded by stating that she wanted to go to a "great school," as she had said in her application, and that Stanford was considered the best school in the country for education. Unsatisfied, Lotan continued to press Kerr on her concerns about Kerr's ability to interact with others in the program. Kerr reassured her that Kerr would do her best to keep her opinions to herself, that she was not attending Stanford to "make trouble," and that she was looking forward to getting started.

After approximately an hour of discussion, Rasch attempted to bring the meeting to a close by asking if another meeting would be necessary. Kerr again stated that she was excited about starting the program in June and that she did not think another meeting was necessary. Lotan, however, said she had doubts and that she would be calling Kerr in for another meeting. Lotan said to Kerr, "For the time being, you are still in the program." Kerr and Rasch expressed surprise, since Kerr's acceptance had been explicitly acknowledged by both Rasch and Lotan before the meeting. Lotan stated that Kerr's failure to respond to her e-mail asking for a meeting was "unacceptable" and that Lotan would again "seek legal advice as to whether or not I can rescind [the offer to Kerr]." Both Rasch and Kerr said that they had understood that Kerr would be attending STEP. Lotan demurred, insisting that she "had not been reassured" and that she would "e-mail [Kerr] at some point," adding that she "expect[ed] a response." Kerr responded by saying that she would not respond to Lotan until she was definitively notified that Lotan was either attempting to rescind Kerr's offer of admission or officially acknowledging Kerr's acceptance.

At present, Kerr has been left uncertain of her status, with classes starting in June. This is unacceptable. To be clear: having offered Kerr admission, Stanford cannot then condition Kerr's acceptance on her abstention from public criticism of the program.

California courts have held that the "basic legal relation between a student and a private university or college is contractual in nature. The catalogues, bulletins, circulars, and regulations of the institution made available to the matriculant become a part of the contract." *Zumbrun v. University of Southern California*, 25 Cal. App. 3d 1, 10 (1972). While it is also true that "[t]here is a widely accepted rule of judicial nonintervention into the academic affairs of schools," courts on occasion have "carved out an exception to this rule by permitting limited intervention whenever it is alleged that a university or college has acted arbitrarily or in bad faith." *Paulsen v. Golden Gate Univ.*, 25 Cal. 3d 803, 808 (1979). Accepting a student—and then denying her

admission on the basis of an unacceptable opinion and nothing more, a course of action Lotan's statements indicate Stanford has been actively considering—is a clear example of arbitrary or bad faith conduct.

Further, although Stanford is a private institution, California's Leonard Law promises all students at private secular postsecondary institutions the same First Amendment rights as students at public universities. Stanford is thus legally restricted from punishing students for the content of their speech—a restriction that would be violated by rescinding an accepted student's offer of admission simply because of a student's critical comments.

Moreover, Stanford's Guide to Graduate Admissions states:

Stanford reserves the right to withdraw an offer of admission if:

- a) you show a significant drop in academic performance or fail to graduate; or
- b) there has been a misrepresentation in your application; or
- c) Stanford learns that you have engaged in behavior prior to matriculation that indicates a serious lack of judgment or integrity.

None of these clauses apply to Kerr's conduct. By Lotan's own admission, she has been advised by legal counsel to this effect. Indeed, Stanford's Statement on Academic Freedom clearly states that “[e]xpression of the widest range of viewpoints should be encouraged, **free from institutional orthodoxy and from internal or external coercion**” (emphasis added). In light of such a laudable commitment to protecting free expression, to rescind Kerr's admission simply on account of her public expression of her beliefs about teaching would be deeply hypocritical and a blatant contradiction of Stanford's stated policy.

FIRE asks that Stanford recognize its legal and moral commitments by immediately and unequivocally affirming Michele Kerr's acceptance to STEP. We further request that you ensure that no college policy or contrivance is used to retaliate against Kerr or to infringe upon the rights of students at Stanford University or its School of Education.

Because of the urgent nature of this case, we ask for a response to this letter by Friday, June 6, 2008.

Sincerely,



Adam Kissel  
Director, Individual Rights Defense Program

cc:

Deborah J. Stipek, Dean, Stanford School of Education  
Rachel Lotan, Director, Stanford Teacher Education Program, Stanford School of Education  
David Arnot Rasch, University Ombuds, Stanford University  
David Labaree, Associate Dean, Student Affairs, Stanford School of Education

Casey Kelley, Admissions Officer, Stanford School of Education  
Michele Kerr