



Foundation for Individual Rights in Education

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January 26, 2009

President John L. Hennessy
Office of the President
Building 10
Stanford University
Stanford, California 94305-2061

Sent via U.S. Mail and Facsimile (650-725-6847)

Dear President Hennessy:

It is with great disappointment that FIRE must write you a second time regarding Michele Kerr, a student in Stanford School of Education's Stanford Teacher Education Program (STEP).

FIRE first wrote you on May 23, 2008, when STEP appeared to condition Kerr's admission upon her ability to refrain from public criticism of STEP's curriculum. STEP administrators had even consulted a lawyer, apparently in hopes of rescinding her admission. At that time, we requested that you ensure that no college policy or contrivance be used to retaliate against Kerr or to infringe upon her rights.

Unfortunately, since that time, STEP has directly threatened Kerr's advancement in the program, and she has been given low ratings and grades on the basis of "professionalism" in an apparent attempt to prevent her from completing the program. In addition, Associate Dean of Student Services Eamonn Callan has made unique, unreasonable demands to investigate Kerr's password-protected blog. Moreover, Callan and STEP Director Rachel Lotan have threatened to charge Kerr with "intimidation" for sending an e-mail to her fellow STEP students regarding her treatment by STEP and her response to students in her program who have voiced complaints about her outspokenness.

In short, Stanford is violating the spirit and perhaps also the letter of California's Leonard Law, in addition to its own policies regarding expressive conduct. STEP is impermissibly intruding upon Kerr's right to hold opinions contrary to those of Stanford's and STEP's leadership, and Stanford is taking action in several ways to punish her for having expressed those opinions.

This letter focuses on two matters in particular: Callan's unacceptable demands and the threat to charge Kerr with intimidation for her protected speech. In

addition, we are deeply concerned about her treatment in the program, but for now, we shall let Kerr's academic and non-academic grievances, which she has recently filed and which are enclosed, speak for themselves. We include them with this letter and hope you will take them very seriously. As for the other matters, this is our understanding of the facts. Please inform us if you believe we are in error.

I. Impermissible Investigation of Kerr's Blog

Kerr has been keeping a personal blog about her educational and other experiences. She began this blog prior to her application to STEP. She has never used students' real names.

In early September 2008, Lotan notified the principal of Kerr's placement school about Kerr's blog. The principal in turn notified Kerr that her blog had been investigated. Kerr agreed to remove the name of the placement school from the blog, and according to Kerr, the principal indicated that the matter was closed and that the blog would be in no way problematic after these changes were implemented.

Nevertheless, Kerr was summoned to a subsequent meeting that day with Lotan and Callan and was informed that she would be reprimanded for content appearing on her blog. According to Kerr, Callan was concerned that the blog mentioned Kerr's interactions with students, but both Lotan and Callan acknowledged that neither STEP nor Stanford had a policy against blogging or any other policy that Kerr had violated. According to Kerr, Lotan and Callan would not specify any particular standard of confidentiality, and they further expressed concern that she had mentioned Stanford and STEP.

According to Kerr, about two weeks later, Callan asked Kerr to take down the blog. Kerr acquiesced and voluntarily self-censored. She temporarily prevented all access to the blog, removed all references to Stanford and STEP, gave herself a new pseudonym, password-protected the site, and restored access only to selected individuals. From mid-September to early December, according to Kerr, no effort was made by Callan or Lotan to formulate a blog policy, specify confidentiality standards, or determine whether any students or faculty members were keeping their own blogs.

In early December, however, Callan "indirectly" (via a source he refused to divulge) was informed that Kerr's blog still existed. On or about December 10, Callan demanded access to Kerr's blog in order to monitor it. Kerr, however, refused to give up her right to post on her blog without interference by the dean. She noted in an e-mail to Callan on December 12 that Stanford and STEP do not require review of posted materials by students on private websites. In addition, she noted that one of STEP's cooperating teachers not only uses his own name and his school's name in his publicly available blog, but also writes negatively about his own students in his blog. Kerr noted that Lotan was aware of this blog (in the presence of the University Ombuds, Lotan had confronted Kerr about a comment of Kerr's she had found on the cooperating teacher's blog) but had taken no action to censor or monitor the cooperating teacher.

Callan did not respond to Kerr's description of Lotan's double standards. Instead, on January 8, Callan proposed by e-mail that Kerr's blog be monitored "for the duration of [her] Stanford

program” for the purpose of determining whether or not Kerr was “sharing confidential information.” If the proposed monitors were to express any such concern, Callan added, he “would expect [her] to give [him] access to the blog to investigate the matter further.” He included the principal of Kerr’s placement school as a recipient of the e-mail, despite the fact that the principal had not expressed concern about the blog since September.

Finally, on or about January 13, 2009, Callan e-mailed Kerr again. He referred vaguely to “professional norms of confidentiality” and the requirements of “relevant federal law” as a basis for monitoring Kerr’s blog. He added, oddly, that “as a matter of good conscience” he would refuse to accept Kerr’s word that she was abiding by the law and by existing Stanford policy.

To Kerr’s knowledge, this requirement is made of no other student or faculty member at STEP. We trust you understand that such a requirement would be a severe violation of the right to freedom of speech. 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 addition, as you undoubtedly are aware, although Stanford is a private institution, California’s Leonard Law forbids private, secular, postsecondary institutions from punishing students for speech otherwise protected by the First Amendment—a restriction that would be violated by uniquely mandating that Kerr subject her blog postings to a censor.

In light of Stanford’s laudable commitment to protecting free expression, please inform Dean Callan that it not only is unlawful for him to require such censorship, but it also is inappropriate for him to continue to beleaguer her (with copies of his requests sent to the principal of the school where she teaches) with his “request” that she waive her own speech rights.

II. Threat to Punish Protected Speech As “Intimidation”

On December 11, 2008, Kerr e-mailed her STEP classmates about a series of experiences she had in the STEP program that seem to show a pattern of unequal treatment and punishment of Kerr because of her views, which are not always in line with the ideological assumptions that she perceives as widely shared at STEP. Kerr has recorded, in detail, many of her conversations and experiences with STEP officials and teachers before and since her matriculation at STEP. We have seen many of these recorded conversations, and they seem to demonstrate an ongoing pattern of poor treatment of Kerr because of her views. FIRE is extremely concerned that STEP officials, including Lotan, are working to build a case to fail Kerr out of the program, or to deny her a necessary recommendation for teaching certification, because of her views. The evidence supporting this concern is outlined in the attached grievances submitted by Kerr and is mentioned in Section III below.

In her December 11 e-mail, Kerr wrote that Lotan had e-mailed her on November 24 with concerns about her “suitability for the practice of teaching” and then had met with Kerr and Callan about those concerns on December 10. Kerr outlined the December 10 conversation, surmising that Lotan was intentionally documenting such conversations “for the purpose of eventually removing me from STEP.” Among a number of experiences she shared that suggest a

pattern of unequal treatment, the outline described a rare or unique set of “no evidence” assessments regarding Kerr’s professionalism despite documented evidence to the contrary.

In addition, the December 11 e-mail addressed Lotan’s allegation in the December 10 meeting that Kerr “was overbearing and domineering with [her] classmates and that they had complained.” According to Kerr, after she asked Lotan for specific examples of such behavior, Lotan responded with only a few vague and unspecified complaints, such as the allegation from one anonymous student that Kerr was “intolerable” and a request from one or more other students that she not sit with them, although no reasons for this desire were revealed. Such complaints by classmates are hardly acceptable as evidence of being unsuitable for the practice of teaching.

Finally, Kerr’s e-mail responded generally to the students who had complained about her. We quote her e-mail at length because it is now being used against her by Lotan and Callan:

1) I genuinely like and respect every STEP candidate I have ever met. . . . [Y]ou are all fantastic, passionate, committed people who I think will make outstanding teachers. However, if I despised one of you, hated what you said in class, held my breath and turned blue every time you opened your mouth, I wouldn’t even think of complaining to the instructor or Rachel [Lotan]. And if Rachel invited me to complain about any student, I’d have laughed in her face and told her to go find a whiner who actually thinks she should be running around guaranteeing her babies a safe and nurturing environment. Which ain’t me. This is just one other sign, I suppose, that my values aren’t in line with those of STEP.

2) If you can’t speak up in a STEP classroom to assert yourself and reach out for the education you’ve been paying for, if you are sitting in class privately seething because you feel that I or anyone else is derailing a conversation that you wish to go in a different direction, then you should reconsider your own priorities and values as a novice educator. SPEAK UP.

Fight for the education you want. And if you don’t feel you should have to, if you’d rather complain to the powers-that-be in the hopes that the power will take care of an interpersonal problem, then how on earth are you planning on going out in the far more ruthless world of public education and effect any change worth mentioning?

3) For those of you who wish to continue requesting that you not sit with me in practicum, make sure you mention the reason so that Rachel can build her case for the next time we do our little dance. “Rachel, I do not want to sit next to Michele in practicum. It has nothing to do with her views; she’s just an domineering, overbearing bitch.” DOB. We could print up cards or something. Don’t Sit Me Next to the DOB! . . .

I am being told that I’ll be expelled if I can’t figure out how to stop my classmates from complaining about me. That’s a valid standard for a fifth grader clique, but

it's not one I'll accept in a graduate academic setting. I'll continue being me, and those of you who feel uncomfortable can maybe learn how to speak up. Or not. Your call.

On December 16, Lotan and Callan sent Kerr a letter regarding this e-mail and regarding the December 10 meeting. The letter noted that their discussion had been “the first step under the STEP Guidelines for Reviewing Concerns Regarding Suitability for the Practice of Teaching.” In a bizarre twist, Lotan and Callan argued that Kerr’s defense of herself in the December 11 e-mail “could have the effect of silencing those who are wary of confronting you directly” and “could have a chilling effect on other students’ ability to express themselves freely.” Since this e-mail was merely an exercise in free expression, and since Kerr has no power over the lives or careers of any other students in the STEP program, it is difficult to imagine how such a “chilling effect” could exist, except to the quite reasonable extent that other students found Kerr’s argument to be persuasive and therefore chose to stop complaining about her.

Most importantly, in this letter Lotan and Callan threatened that “additional acts of intimidation towards other students ... may require us to proceed on to [the] ‘informal hearing’ stage of the STEP Guidelines for Reviewing Concerns Regarding Suitability for the Practice of Teaching.” Although Lotan and Callan acknowledged that students who have a concern about Kerr could “express themselves through any appropriate channel,” Lotan and Callan nevertheless threatened Kerr with disciplinary action for publicly defending herself.

Kerr’s e-mail comes nowhere close to meeting the legal standard of intimidation. The Supreme Court directly addressed what constitutes true intimidation in *Virginia v. Black*, 538 U.S. 343, 359 (2003) which defined constitutionally proscribable intimidation as “a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death.”

Once again, Stanford’s Statement on Academic Freedom, the Leonard Law, and common sense all protect Kerr’s speech from Callan’s and Lotan’s threats of punishment. Please inform Callan and Lotan that it is both immoral and unlawful to threaten Kerr with a charge of “intimidation” or any other punishment for her protected expression.

III. Additional Threats to Fail Kerr Out of STEP

The December 16 letter from Lotan and Callan also institutes vague requirements that Kerr “improve” in a variety of ways in order to avoid further proceedings against her. These vague requirements include, among other items, “Work as a team with STEP faculty, staff, peers, university supervisor ...,” “Develop and maintain an openness to learning and self criticism,” and “[A]ccept[] corrective and critical feedback from instructors, colleagues”

According to Kerr and her accounts of conversations (particularly with Lotan) over the past several months, most of these alleged deficiencies are easily traced to disagreements that Kerr has had with STEP faculty members about matters of opinion with regard to ideologies of teaching. It appears that Kerr’s frank presentation of her personal views is being treated as a set of character flaws that will be used to justify expulsion from STEP if she does not fall into line.

Again, please see the attached grievances, and please let us know if you would like to see Kerr's detailed accounts of her conversations. If STEP's immoral persecution of Kerr continues, FIRE will write to you again specifically on this issue.

For now, please note the landmark Supreme Court decision *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 633–34 (1943), in which the Court struck down a West Virginia state law compelling all public school students to participate in a daily flag salute. The Supreme Court ruled that the requirement was unconstitutional because it forced citizens to “declare a belief” in violation of the First Amendment, one purpose of which is to protect the “sphere of intellect and spirit” from “official control.” As Justice Robert Jackson famously wrote, “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.”

That STEP—a Stanford graduate program that prepares students for teaching jobs in the public and private schools of California—is violating Kerr's rights in precisely this regard puts into question the credibility of nearly the entire program.

Thus, please remind Callan and Lotan that any attempt to punish Kerr for refusing to change her views on matters of opinion, including ideologies of teaching, is a violation of Kerr's right to private conscience.

Finally, your own strong defense of freedom of expression in *Stanford Magazine* (November/December 2007) is worth noting:

The right to express one's ideas freely is accepted easily when the ideas are in the center of the political spectrum. It is the difficult and extreme circumstances that try our principles and put the strength of our commitment to free and open dialogue to test.

It appears that in the context of the STEP program, Michele Kerr and her views are considered so extreme that they are worthy of monitoring, censorship, punishment, and perhaps even expulsion. The “wind of freedom,” as Stanford's motto has it, seems not to be blowing at STEP.

FIRE asks that Stanford recognize its legal and moral commitments by immediately and unequivocally abandoning attempts to monitor Kerr's blog, withdrawing threats to punish Kerr for “intimidation,” and ceasing efforts to fail Kerr out of STEP because of her protected expression and her protected beliefs. We again request that that no college policy or contrivance be used to retaliate against Kerr or to infringe upon her rights.

We ask for a response to this letter by 5:00 p.m. EST on February 10, 2009.

Sincerely,



Adam Kissel
Director, Individual Rights Defense Program

cc:

Deborah J. Stipek, Dean, Stanford University School of Education

Eamonn K. Callan, Associate Dean for Student Affairs, Stanford University School of Education

Rachel Lotan, Director, Stanford Teacher Education Program, Stanford University School of
Education

Edward H. Haertel, Associate Dean for Faculty Affairs, Stanford University School of Education

Casey Kelley, Admissions Officer, Stanford University School of Education

David Arnot Rasch, University Ombuds, Stanford University

Michele Kerr

Encl. (U.S. mail only)