



September 30, 2024

Letter to Northwestern University officials from the Executive Committee of the Northwestern chapter of the American Association of University Professors (NU-AAUP)

Dear President Michael Schill, Provost Kathleen Hagerty, Vice President and Chief Financial Officer Amanda Distel, and Vice President for Operations and Chief Operating Officer Luke Figora,

On grounds of procedure, substance, and, above all, to defend the mission of education at Northwestern University, we call on you to retract immediately the Demonstration Policy and related protocols announced on September 5, 2024. We ask that you abide by long-standing American Association of University Professor (AAUP) principles that are foundational to our university and incorporated into the first sentences of our Faculty Handbook.

As members of a national organization dedicated to academic freedom and integrity, we request the following:

- (1) The immediate withdrawal of the recently drafted protest policies and all other policies that violate American Association of University Professors standards *or* were not created by a faculty-led committee and supported by a vote of the Faculty Senate.**
- (2) The immediate revocation of warnings, investigations, suspensions, and terminations initiated in violation of Northwestern policies and the Faculty Handbook.¹**
- (3) A meeting with Northwestern trustees, to explain how protecting free speech on campus promotes an education at Northwestern conducive to citizenship and democracy, and to respond to the concerns driving these new policies and actions.**
- (4) Transparency to all Northwestern stakeholders on the specific authors and process by which the Demonstration Policy was created and the criteria on which President Schill relied for the selection of his ad hoc “faculty” committees, including the “Free Expression**

¹ Stephen Thrasher, “False Profits: Why I am not Teaching in the Classroom this Fall,” *Literary Hub*, Sept. 16, 2024.

<https://www.youtube.com/watch?v=Xuft76b7w6o>

and Institutional Speech,” committee, none of which included representatives of the AAUP, but did include those serving as administrators.

(5) The revocation of policies previously identified that violate AAUP standards.²

Procedure and Substance

Procedure

Policies that affect our students obviously affect education and thus require review by faculty committees and support of the Faculty Senate. That the Demonstration Policy – circumscribing faculty conduct as well as that of other community members – was implemented without approval of the Faculty Senate is particularly egregious, your misleading e-mail blasts notwithstanding.³

Indeed, you have appeared to have gone out of your way to avoid the expertise of Northwestern faculty. Colleagues at the law school and in our NU-AAUP chapter have published on the topic and prepared Faculty Senate committee reports. Professor Max Schanzenbach and Professor Kim Yuracko have co-authored several insightful essays reviewing the speech and conduct policies at Northwestern and other universities. Their proposed policies favor speech protections and are diametrically opposite to those you are implementing.⁴ The exclusion from the policy-making

² NU-AAUP, “[Report of the Committee on Northwestern's COVID Response](#),” November 24, 2020. The Report references several policies justified by “crisis” and not reversed. Tal Schatsky, “[Northwestern Faculty Condemn Northwestern's 'Corporate Approach to Education'](#),” January 11, 2021.

³ Sources in the Faculty Senate (FS) leadership and the Faculty Senate Student Conduct Committee, indicated that Susan Davis, Vice President for Student Affairs, and Christopher Zacharda, Senior Associate Dean of Students, met in the spring with the Chair of the FS Student Affairs Committee. At this time, they reviewed the general scope of changes contemplated. The Committee Chair did not see the policy until it was released on September 5, 2024. A member of the Student Conduct Committee indicated no knowledge of the spring meeting or proposed changes. Other committees with jurisdiction over these changes, including the Faculty Rights and Responsibilities Committee and the Governance Committees, also were not consulted for feedback on the proposed changes, according to FS President Jill Wilson. Last year's FS President, Regan Thompson, was a member of the Policy Review Committee. He did not convey information about the proposed changes to the representatives of the Faculty Senate, according to several representatives contacted. Neither President Wilson nor President *ex officio* Thompson indicated the existence of any venue through which the faculty representatives, much less the faculty at large, could have weighed in on the changes prior to their announcement. E-mails to the University community indicating faculty support have no basis in reality.

⁴ See esp. Max Schanzenbach and Kim Yuracko, “Promising the First Amendment: (De)Regulating Speech in Higher Education,” (August 05, 2024). <https://ssrn.com/abstract=4916243> or <http://dx.doi.org/10.2139/ssrn.4916243>. Other essays by them or about their arguments include, “Northwestern University Must Embrace the First Amendment Standard of Speech,” *Chicago Tribune* (Aug. 30, 2024); <https://www.chicagotribune.com/2024/08/30/opinion-northwestern-university-free-speech-academic-freedom>. “College Speech Policies are a Mess—and a Liability, *Chronicle of Higher Ed* (Aug. 28, 2024), <https://www.chronicle.com/article/college-speech-policies-are-a-mess-and-a-liability>. “Just Follow the First Amendment,” *Inside Higher Ed*. (Jan 5, 2024) <https://www.insidehighered.com/opinion/views/2024/01/05/private-colleges-should-follow-first-amendment-opinion>; “Universities' shifting policies toward speech are not only hypocritical but also illegal,” *Chicago*

process of colleagues who disagree with the preferences of the administration underscores the discrepancy between President Schill's and Provost Hagerty's stated commitment to the free exchange of ideas and your actual engagement with opposing viewpoints.

Substance

The recent policies evidence a continuing disregard for core principles of the AAUP, including academic freedom and shared governance.

As historical background and context, the AAUP emerged from the efforts of University of Chicago professor and later Columbia University President John Dewey and colleagues concerned about retribution by trustees against faculty who spoke out in support of labor, opposed U.S. imperialism in the wake of the Spanish-American War, and pushed to insure their universities protected citizens and democracy against the forces that then and today run our universities. In 1915 they wrote:

The special dangers to freedom of teaching in the domain of the social sciences are evidently two. The one which is the more likely to affect the privately endowed colleges and universities is the danger of restrictions upon the expression of opinions which point toward extensive social innovations, or call in question the moral legitimacy or social expediency of economic conditions or commercial practices in which large vested interests are involved. In the political, social, and economic field almost every question, no matter how large and general it at first appears, is more or less affected with private or class interests; and, as the governing body of a university is naturally made up of men who through their standing and ability are personally interested in great private enterprises, the points of possible conflict are numberless.⁵

Northwestern policy conflicts with AAUP principles also seem to be infinite, and our principles are daily disregarded. Recent policy changes are inconsistent with our educational mission, not to mention conducive to unlawful arbitrariness and First Amendment violations. They appear to advance the special interests of certain NU trustees and not the Northwestern community.

The policies and explanations contain serious mistakes, lack citations and attributions of authorship, and in places are incoherent and thus unenforceable. Moreover, the double standards of the edicts further highlight your lack of concern for the free exchange of ideas and therefore lack integrity.

Tribune (Nov. 23, 2023).

<https://www.chicagotribune.com/2023/11/29/law-professors-universities-shifting-policies-toward-speech-and-not-only-hypocritical-but-also-illegal/>.

⁵ *Academic Freedom and Tenure: A Handbook of the American Association of University Professors*, Appendix A. Edited by Louis Joughin, University of Wisconsin Press, Madison, Wisconsin. 1967. pp.155 - 176.

For instance, one protocol in the Demonstration Policy prohibits “[u]sing force, threat, or coercion to compel a particular course of action or participation in support of a cause or activity...” But what about the threat of expulsion, suspension, or wrongful referral for prosecution abused by the administration, including against faculty and staff? And when President Schill announced new “mandatory” student training to implement your illiberal protocols, was he not using threats to compel participation in support of one position to the detriment of other groups who have opposing positions on demonstration policies appropriate to current controversies, e.g., those of the AAUP?

The first sentences of the Demonstration Policy states: “Northwestern welcomes the expression of ideas, including viewpoints that may be considered unorthodox or unpopular. The University supports free expression and allows peaceful demonstration.” On what criteria will Northwestern rely when assessing which speech is “welcome” for its unorthodox or unpopular viewpoints and which speech will be punished because it “intimidate[s]”?⁶ The standards for such evaluations are unlikely to be fair or consistent: “The university disciplinary process-- with its informality, discretion, and secrecy—combined with the ideological homogeneity of decision-makers makes even-handed and hence lawful enforcement of student speech codes unlikely,” according to our Northwestern law school colleagues.⁷

The policy also requires immediate “compliance” with “request[s],” and “instruction[s]” of University officials, including demonstrators’ identification, displacement, and removal of signs.⁸ Where is the value of “due process” President Schill told Congress existed at Northwestern, including any right of Northwestern community members to question the assessments of these officials, or even know the identities of those confronting them?

⁶ The policy states, “No community member or third party may intimidate, threaten to use force, or use force against any community member or third party.” The definition of “intimidate” is inherently subjective. To “Intimidate” depends on the claims of those putatively aggrieved, as defined by the *American Heritage Dictionary*. “To make timid; fill with fear: *The size of the opposing players intimidated us.*” According to NU’s Demonstration Policy, an intra-mural softball squad could be punished based on demonstrating the size of its team members.

Schill’s own standards are not those of even other university presidents: “For example, President Schill has characterized the slogan, ‘from the river to the sea, Palestine will be free’ as an ‘antisemitic dogwhistle,’ that could, thus, trigger the “intimidation” prohibition, “but UCLA President Gene Block claim[ed] that ‘many people do not see the phrase as antisemitic.’” Schazebach and Yuracko, “Promising the First Amendment,” p. 29, note 134, citing *Calling for Accountability: Stopping Antisemitic College Chaos: Hearing Before the H. Committee on Education and the Workforce*, 118th Cong. 47 (2024).

⁷ Schanzenbach and Yuracko, “Follow the First Amendment,” p. 32.

⁸ “I. Community members and third parties must identify themselves upon request by University officials. II. Community members and third parties must remove placards, banners, signs, installations or other displays that violate this Policy and/or other University Policies upon request by University officials. III. Community members and third parties must leave University locations when instructed to do so by a University official or Northwestern University Police. When possible, participants will be first given a warning to leave unless a physical safety issue prevents that step.”

The Policy further prohibits “community members” from “us[ing] or occupy[ing] campus facilities in a manner that impedes University operation of activities or events.” Would Northwestern be so hypocritical as to include among the causes triggering censure or punishment student protests against civilian massacres in a war enabled by United States foreign policy and weapons, if not personnel? After all, didn’t Northwestern recently commend student protesters for the Vietnam-era [takeover of the Bursar’s Office](#)? Or are we only to honor the long legacy of non-violent civil disobedience in the United States as a form of political rhetoric and speech if it occurs in the past and is not used as a present day tool to effect positive change? If a neutral observer were to consider matters, would this individual not come to the conclusion that the occupation of the offices of the Rebecca Crown Plaza by its current leadership constitutes the most blatant and immediate impediment to operations advancing education on this campus?

Northwestern’s new policy further states that, “Demonstrations cannot take place in areas where the presence of participants would compromise physical safety or a *reasonable expectation of privacy...*” (emphasis added). A “demonstration” means a “*public* display of group opinion, as by a rally or march: *peace demonstrations*” (emphasis added), according to the *American Heritage Dictionary*. Anyone proximate to a demonstration is by definition in public and thus lacks any expectation of privacy, reasonable or otherwise. Northwestern’s effort to provide some claim of a “privacy” expectation for an event that is inherently public is oxymoronic and thus absurd.

In addition to crafting policies that in places are inconsistent or simply nonsense, Northwestern’s administration has had its judgment rebuked by independent law enforcement professionals. The University demonstrably does *not* support free expression and peaceful demonstration according to Cook County State’s Attorney’s office, which refused to prosecute charges against four Northwestern community members filed by the Northwestern University police this past summer. “This decision [not to prosecute] is consistent with our office’s policy to decline prosecution against peaceful protestors,” said Tandra Simonton, chief communications officer for the Cook County State’s Attorney’s Office, as reported by [MSNBC](#). These findings clearly refute the premise of recent intimidating “final warning” letters sent to two colleagues. (The letters falsely claim their actions during these events violated public safety and threaten termination if the addressees refuse to abide by the administration’s Demonstration Policy.) Indeed, an external law enforcement agency [twice](#) this year has refused to prosecute Northwestern community members for alleged criminal conduct that was later deemed protected speech, the prior event tied to a parody of the *Daily Northwestern*.

Similarly, your policies continue to restrict how students communicate about these investigations: “Unauthorized release or disclosure of information related to a student conduct proceeding” is considered “misconduct.” Laws are in place already that protect against defamation and other concerns enumerated in the student conduct policies. Instead of deferring

to the wisdom and protections of our democratic institutions, including the First Amendment, the administration autocratically will punish those who distribute “unauthorized” information.

Yes, many of our First Amendment protections have been held not to apply to private universities. However, for reasons of principle and law, the First Amendment provides the criteria for protecting our campus community and education, as Harvard Law Professor Cass Sunstein argued recently in the *New York Times*, citing the essay by Schazenbach and Yuracko “urg[ing] private universities to … deregulate student speech and explicitly commit to the First Amendment.”⁹

The First Amendment stands for the importance of citizens being able to organize and speak truth to power. But instead of using the First Amendment as a shield against spurious Title VI investigations and the threats of Rep. Virginia Foxx (R-NC) and others on the House Committee on Education and the Workforce, both egged on by partisan¹⁰ special interest organizations and certain Northwestern trustees, the University is instead capitulating to bullies who prefer the administration violate its founding dedication to the truth.¹¹

Moreover, Northwestern’s student conduct and demonstration policies that violate academic freedom are contrary to law. “[R]egulators may not use Title VI or Title IX to require universities, whether public or private, to punish protected speech,” according to Schazenbach and Yuracko.

Consider the measure banning projections on university buildings, one seemingly responsive to a complaint about the projection of a Palestinian flag on the Deering Library submitted by a conservative campus watchdog group and eliciting a Department of Education investigation, all procedural and without merit. When a partisan outside group indicates a preference that Northwestern muzzle its students, our leadership should not accede but stand firm on long established principles.

⁹ “[U]niversities have created a system that is opaque, maximizes discretion, encourages complaints, and has few mechanisms that promote consistency. Their job would be easier and their students better served if universities committed to a First Amendment standard that provides clarity, consistency, and external review.” , “Follow the First Amendment,” p. 33.

¹⁰ We use the word “partisan” in reference to Zionist organizations such as ADL Midwest, which in April of 2024 called for President Schill to resign because of his negotiations with students. “Zionist” here refers to those who understand a Jewish identity as one obligating the maintenance of a specifically Jewish nation-state, a position that has led to Title VI case law that protects Jewish students as a national or ethnic group despite the law’s exclusion of protections against discrimination based solely on religion of, say, Methodists.

¹¹ “Quaecumque Sunt Vera.’ This Latin phrase was adopted as the University’s official motto in 1890. Translated as ‘Whatsoever things are true,’ it comes from the New Testament book of Philippians (4:8), in which St. Paul admonishes the Christians in the Greek city of Philippi.”

<https://www.northwestern.edu/studentaffairs/community/students/traditions.html> The admonishment is to speak truth to power, not to carry out the will of unjust tyrants in pursuit of money or other material rewards.

Transparency

The specific authors of these policies are not indicated.¹² The new policy prohibits student demonstrators from wearing masks, while those creating these pronouncements hide their own identities. We request the release to the NU-AAUP Executive Committee of the affiliations and positions of those inside and outside of Northwestern responsible for these new protocols and citations as well as any memorandums or publications on which this group relied, including scholarly articles and case law. **We also ask that this be provided to all representatives of the Faculty Senate.** Transparency is vital and foundational to the trust and accountability at stake in faculty shared governance.

Suspensions of Stephen Thrasher and Josh Honn

Professor Stephen Thrasher and librarian Josh Honn have been disciplined and charged, respectively, on pretexts and without due process. Information from Professor Thrasher and his attorney Rima Kapitan indicates a complete abandonment of standards set forth by the American Association of University Professors *Red Book*,¹³ as well as those in Northwestern's Faculty Handbook and university policies.¹⁴ We are in the process of collecting details for an additional report. In the meantime, we urge the administration to immediately drop the witch hunts against our colleagues. We also urge the Faculty Senate to change the process by which Deans appoint individuals to the Faculty Appeals Panel, from which the administration hand-picks those eligible for serving on disciplinary review committees. Selection should be based on sortition and not deans selecting specific faculty, the [current practice](#).

Conclusion

Serious challenges face our student-citizens: climate change, a U.S. budget deficit on steroids, a heightened threat of nuclear war. What occupies the leadership of Northwestern? Punishing those in the Northwestern community for speech that makes some uncomfortable; substantially diminishing support for teaching and research, including faculty salaries and library resources; and of course, promoting football, including a new stadium.

We urge the administration to reconsider the immense use of administrative resources now restricting education and to appropriate the resources currently spent on attorneys and new layers of administrators to funding and protecting faculty and student research and learning.

¹² See note 3.

¹³ AAUP, *Policy Documents and Reports*, <https://www.aaup.org/reports-publications/publications/redbook>.

¹⁴ Joyce Li and William Tong, "[Medill investigates professor who participated in pro-Palestine encampment, cancels his classes](#)," *Daily Northwestern*, September 11, 2024.

Signed,

Jackie Stevens, President (Professor, Political Science)

Jorge Coronado, Treasurer (Professor, Spanish and Portuguese)

Sam Weber, Member at Large (Avalon Foundation Professor of Humanities, Professor of German and Comparative Literature)