



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

June 23, 2020

Gene Block, Chancellor
UCLA Chancellor's Office
Box 951405, 2147 Murphy Hall
Los Angeles, CA 90095-1405

Re: 20 U.S.C. § 1094 Investigation/Request for Records and Transcribed Interviews

Dear Chancellor Block:

The U.S. Department of Education has become aware of reports suggesting the University of California, Los Angeles (UCLA) improperly and abusively targeted an instructor named [REDACTED] for disciplinary action. The claimed pretext for this improper and abusive targeting is that [REDACTED] allegedly read Martin Luther King Jr.'s "Letter from Birmingham Jail" and showed clips from a documentary of Dr. King to his class. See, e.g., <https://freebeacon.com/issues/university-to-investigate-lecturer-for-reading-mlks-letter-from-birmingham-jail/> and <https://www.foxnews.com/us/ucla-professor-investigation-mlk-n-word>.¹⁻²

UCLA claims to guarantee its faculty the right to free inquiry and exchange of ideas; the right to present controversial material relevant to a course of instruction; and the enjoyment of constitutionally protected freedom of expression. See GENERAL UNIVERSITY POLICY REGARDING ACADEMIC APPOINTEES - *The Faculty Code of Conduct* at 3 (Code) <https://www.ucop.edu/academic-personnel-programs/files/apm/apm-015.pdf>. The above-referenced targeting and conduct, if it occurred, is seemingly inconsistent with UCLA's representations to students, the public, and the Department regarding its instructors' right to free inquiry and exchange of ideas, to present controversial material relevant to a course of instruction, and to enjoy constitutionally protected freedom of expression. This inconsistency, in turn, could render the Code a substantial misrepresentation regarding the nature of UCLA's educational program in violation of 20 U.S.C. § 1094(c)(3)(B) and materially violate certain of UCLA's contractual promises to the Department. See 34 CFR 668.71(c); U.S. Dep't of Educ., Notice of Proposed Rulemaking, 85 Fed. Reg. 3190, 3213 n.137 (Jan. 17, 2020) ("The Department notes that public and private institutions

¹ Oddly, media outlets such as the New York Times and Washington Post have proven utterly incurious regarding UCLA's alleged actions and conduct in this case. Targeting an instructor for reading from the works of Dr. King or showing a documentary quoting him is a direct assault on academic freedom and constitutionally protected free speech.

² In the past, UCLA has publicly celebrated Dr. King's legacy without censoring his words. See <https://newsroom.ucla.edu/stories/archivist-finds-long-lost-recording-of-martin-luther-king-jr-s-speech-at-ucla> and https://www.youtube.com/watch?v=ny6qP0rb_Ag&feature=youtu.be.

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The Department of Education's mission is to promote student achievement and preparation for global Competitiveness by fostering educational excellence and ensuring equal access.

also may be held accountable to the Department for any substantial misrepresentation under the Department's borrower defense to repayment regulations"); Standard Form 424B.

As you are aware, the Secretary may impose certain monetary penalties and other measures if an institution engages in substantial misrepresentation about the nature of its educational programs and/or violates its program participation agreement. As you are also aware, the Department has investigative authority over such things. Therefore, the Department requests you comply with the following requests for information and transcribed interviews. See 20 U.S.C. § 1094(a)(17); 20 U.S.C. § 1097a; *accord U.S. v. Morton Salt*, 338 U.S. 632, 642 - 63 (1952); *U.S. v. Powell*, 379 U.S. 48, 57 (1964); *Oklahoma Press Pub. Co. v. Walling*, 327 U.S. 186, 216 (1946).

I. Records Production

Please produce the following records within thirty (30) calendar days:

1. All records created by, regarding, or relating to [REDACTED], and/or [REDACTED]. The relevant time for this request is February 1, 2020, to the present.
2. All records regarding or relating to the circumstances and events reported, described, or mentioned at <https://freebeacon.com/issues/university-to-investigate-lecturer-for-reading-mlks-letter-from-birmingham-jail/>. The relevant time for this request is May 1, 2020, to the present.
3. All records regarding or relating to the Code. The relevant time for this request is January 1, 2020, to the present.
4. All records regarding or relating to Part III of the Code. The relevant time for this request is January 1, 2016, to the present.

"Record" means all recorded information, regardless of form or characteristics, made or received, and including metadata, such as email and other electronic communication, word processing documents, social media (e.g. Facebook and Twitter) posts, PDF documents, animations (including PowerPoint™ and other similar programs) spreadsheets, databases, calendars, telephone logs, contact manager information, Internet usage files, network access information, writings, drawings, graphs, charts, photographs, sound recordings, images, financial statements, checks, wire transfers, accounts, ledgers, facsimiles, texts, animations, voicemail files, data generated by calendaring, task management and personal information management (PIM) software (such as Microsoft Outlook), data created with the use of personal data assistants (PDAs), data created with the use of document management software, data created with the use of paper and electronic mail logging and routing software, and other data or data compilations, stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form. The term "recorded information" also includes all traditional forms of records, regardless of physical form or characteristics.

Production should occur as follows.

- Searches for records in electronic form should include searches of all relevant mobile devices, hard drives, network drives, offline electronic folders, thumb drives, removable drives, records stored in the cloud, and archive files, including, but not limited to, backup tapes. Do not time stamp or modify the content, the create date, or the last date modified of any record and do not scrub any metadata. Electronic records should be produced in native format. For e-mails, please place responses in one .pst file per employee. For .pdf files, please provide searchable file format and not image file format.
- All email and social media searches should be conducted by the agency's information technology department, or its equivalent, and not by the individuals whose records are being searched. Please provide the name and contact information of the individual(s) who conducted the search, as well as an explanation of how the search was conducted.
- To the extent practicable, please produce all records in a searchable electronic format and not hardcopies. Should you have any questions about the method or format of production please contact the undersigned to coordinate.
- The only applicable privilege is attorney-client privilege. A log of all such records, describing in detail the contents of the record and the grounds for the claimed privilege.

II. Transcribed Interviews

Please make the following individuals available for transcribed interviews:

1. Gene D. Block
2. A duly authorized corporate designee to testify regarding (a) policies regarding free speech, free inquiry, and the First Amendment; (b) the contents, history, and application of the Code; (c) policies regarding faculty discipline for classroom-related conduct; and (c) all specific cases of faculty discipline from January 1, 2016 to the present.
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]

This investigation will be conducted by the Department's Office of the Postsecondary Education, with support from the Office of General Counsel. Your legal counsel will be contacted by Paul R. Moore, the Office of the General Counsel's Chief Investigative Counsel, to schedule the transcribed interviews, and by the Office of the General Counsel's E-discovery attorney, Kevin Slupe, to arrange for record transmission.

Chancellor Gene Block
June 23, 2020
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Thank you in advance for your cooperation.

Sincerely yours,

6/23/2020

Signed by: Robert King

Robert L. King
Assistant Secretary
Office of Postsecondary Education

Enclosure (Exhibit A)

Cc: Reed D. Rubinstein, Principal Deputy General Counsel
delegated the Authority and Duties of the General Counsel

Paul R. Moore, Chief Investigative Counsel

Kevin Slupe, Special Counsel

EXHIBIT A

RECORD PRESERVATION REQUIREMENTS

This investigation requires preservation of all information from your institution's computer systems, removable electronic media, filing systems, and other locations relating to the matters that are the subject of the Notice of Investigation. You should immediately preserve all data and information about the data (i.e., backup activity logs and document retention policies) relating to records maintained in the ordinary course of business and that are covered by the Notice of Investigation. Also, you should preserve information available on the following platforms, whether in your possession or the possession of a third party, such as an employee or outside contractor: databases, networks, computer systems, including legacy systems (hardware and software), servers, archives, backup or disaster recovery systems, tapes, discs, drives, cartridges and other storage media, laptops, personal computers, internet data, personal digital assistants, handheld wireless devices, mobile telephones, paging devices, and audio systems (including voicemail). You should also preserve all hard copies of records regardless of location.

The laws and rules prohibiting destruction of evidence apply to electronically stored information in the same manner that they apply to other evidence. Accordingly, you must take every reasonable step to preserve relevant records. "Reasonable steps" with respect to these records include:

- Notifying in writing all potential custodians and IT personnel who may have relevant records of their preservation obligations under this investigation.
- Discontinuing all data and document destruction policies.
- Preserving all metadata.
- Preserving relevant records and/or hardware unless an exact replica of the file (a mirror image) is made.
- Preserving passwords, decryption procedures (and accompanying software), network access codes, ID names, manuals, tutorials, written instructions, decompression or reconstruction software.
- Maintaining all other pertinent information and tools needed to access, review, and reconstruct necessary to access, view, and/or reconstruct all requested or potentially relevant electronic data.

You have an obligation to preserve all digital or analog electronic files in electronic format, regardless of whether hard copies of the information exist, with all metadata. This includes preserving:

- Active data (i.e., data immediately and easily accessible today).
- Archived/journaled data (i.e., data residing on backup tapes or other storage media).
- Deleted data (i.e., data that has been deleted from a computer hard drive but is recoverable through computer forensic techniques).
- Legacy data (i.e., data created on old or obsolete hardware or software).