



June 3, 2021

Christopher Maynard
Academic Affairs
Sam Houston State University
1905 University Avenue
Huntsville, Texas 77341-2026

URGENT

Sent via Next-Day Delivery and Electronic Mail (maynard@shsu.edu)

Dear Interim Provost Maynard:

The Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

As we wrote to president White last month in the enclosed letter, FIRE is concerned by Sam Houston State University's recent dismissal of student Phelan Dickerson from SHSU's master's program in Counselor Education – Clinical Mental Health, in apparent response to tweets criticizing the university. Dickerson's tweets are clearly protected by the First Amendment. By disciplining students for their speech, SHSU betrays its obligations as a public institution bound to uphold the Constitution.

We are disappointed that SHSU has failed to respond to our initial correspondence in this matter. If SHSU is unwilling to defend its actions in private, it will be unable to do so in public.

We understand that Dickerson now faces her final institutional appeal in this matter, which will be considered by you. In light of this, please see the enclosed letter detailing Dickerson's rights and SHSU's obligations under the First Amendment.

Lindsie Rank
Program Officer, Individual Rights Defense Program

Cc: Kathleen Rice, Associate Dean of Graduate Studies
Stacey Edmonson, Dean, College of Education
Alisa White, President

Encl.



May 19, 2021

Alisa White
The Office of the President
Sam Houston State University
Box 2026
Huntsville, Texas 77341-2026

URGENT

Sent via Next-Day Delivery and Electronic Mail (arwhite@shsu.edu)

Dear President White:

The Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

FIRE is concerned by Sam Houston State University's recent dismissal of student Phelan Dickerson from SHSU's master's program in Counselor Education – Clinical Mental Health, in apparent response to two tweets criticizing the university. These tweets are clearly protected by the First Amendment. SHSU betrays its obligations as a public institution bound to uphold the Constitution by disciplining students for their speech. To remedy this oversight, SHSU must reinstate Dickerson's candidacy in the program.

I. SHSU Dismisses Student for Tweeting Complaint About Professor

The following is our understanding of the pertinent facts. We appreciate that you may have additional information to offer and invite you to share it with us. Please find enclosed an executed waiver authorizing you to share information with FIRE. However, if the facts here are substantially accurate, SHSU must reinstate Dickerson to the Counselor Education program, and must ensure students are not subjected to discipline for protected expression in the future.

Phelan Dickerson was, until recently, a graduate student in SHSU's Counselor Education – Clinical Mental Health master's program. Dickerson has brought concerns to SHSU's administration regarding gender and racial inclusivity and student rights, generally.

For example, in the fall of 2019, Dickerson was enrolled in an ethics course with Professor [REDACTED]. During this course, [REDACTED] made a joke about kissing Dickerson, which she found concerning. During the next class period, [REDACTED] made negative comments about feminist theory, with which Dickerson disagreed. Dickerson criticized [REDACTED] comments about feminist theory, and the next week was asked by her advisor to schedule a mediated meeting to discuss her with [REDACTED].¹ Due to scheduling issues, this meeting never occurred.

In the spring of 2020, Dickerson experienced a series of conflicts with another professor, [REDACTED]. On the first day of class, [REDACTED] asked another student to “cover up” when this student came to class wearing a tank top. Seeing that other members of the class, including herself, were also wearing tank tops and were nonetheless not asked to cover up, Dickerson felt that her classmate had been singled out because of the classmate’s body type. Dickerson raised this issue with [REDACTED], and also notified Associate Dean of Graduate Studies Kathleen Rice of this situation.

The difficult relationship between Dickerson and [REDACTED] unfortunately did not end at that point. [REDACTED] class was a partner-based course, in which students completed assignments in pairs, turning in a single assignment for both students. Despite this system, Dickerson multiple times found herself earning lower scores on assignments than her partner, even though both students turned in the exact same work.

At one point during the spring 2020 semester, [REDACTED] sent an email to all students in her class notifying them of who had not completed the Collaborative Institutional Training Initiative program.² Despite having completed the training in a previous semester and having sent [REDACTED] confirmation of this completion, Dickerson was included on this list. In an exchange trying to clarify why she was listed as not having completed this training, Dickerson emailed [REDACTED] saying, “I don’t know what you’re talking about.”³ After [REDACTED] took issue with Dickerson’s tone in this email, and to avoid the potential misunderstandings that can occur in written communication, Dickerson called [REDACTED].

While on the phone, [REDACTED] told Dickerson to “stop asking so many stupid questions in class” and called her “a worthless cunt.” Dickerson informed [REDACTED] that she would be filing a complaint about this interaction. After the call, while Dickerson was drafting this complaint, she received an email that [REDACTED] had complained about her “unprofessional tone.” Dickerson was called to meet with Rice about this situation. This meeting took place on March 4, 2020, with Rice, Dickerson’s advisor professor Timothy Brown, and [REDACTED] in attendance. According to Dickerson, when she discussed [REDACTED] calling her a “worthless cunt” at this meeting, Rice initially dismissed these claims. However, [REDACTED] then

¹ Email from Timothy Brown, Assistant Professor, Dep’t of Counselor Educ., SHSU, to Dickerson (Nov. 18, 2019) (on file with author).

² Email from [REDACTED] to COUN 5379(2) students (Feb. 26, 2020, 12:25 PM) (on file with author).

³ Email from Dickerson to [REDACTED] (Feb. 26, 2020, 3:17 PM) (on file with author).

admitted that she had, in fact, made such a comment to Dickerson, according to Dickerson's recollection of the meeting.

When Dickerson first applied for candidacy to the Counselor Education program in the fall of 2020, her application was denied because of concerns with her professionalism, which appear to be connected to the above-detailed conflicts with ██████ and ██████.⁴ Dickerson was placed under a remediation plan, with the understanding that if she completed this plan, she could successfully reapply for candidacy.⁵ This remediation plan included Dickerson improving relationships with professors, attending mental health counseling, and having monthly meetings with her advisor.⁶

After working through this remediation plan, Dickerson re-applied for candidacy in March, and she was admitted.⁷

In early April of 2021, Dickerson discovered that she would be required to take another course with ██████ in the upcoming fall semester. Concerned about this situation, Dickerson tweeted at SHSU's Twitter account, "Hey @SamHoustonState – if me and all my fellow grad students witnessed ██████ [sic] call me a worthless cunt, and give us bad grades out of spite and she admitted it to the dean, why are we still forced to take classes with her? Why are there no other options for adv pharma??"⁸ Dickerson followed that with another tweet: "It's complete and utter bullshit that she ADMITTED this unprofessional behavior in front [sic] of me, my advisor, and the dean and my classmates are constantly trying to schedule around her classes so we don't have her, yet y'all haven't given her a single consequence[.]"⁹

In response to these tweets, a week later, Seth Olson, Counselor Education department chair, emailed Dickerson to schedule a meeting to discuss her "recent post on social media."¹⁰

After meeting with Olson on April 22, Dickerson was informed in a May 5 letter that she had been dismissed from the program.¹¹ The letter alleged that Dickerson had "behav[ed] towards faculty in an unprofessional manner" and had not "resolv[ed] conflicts with faculty through appropriate channels outlined in the Master's Student Handbook."¹²

⁴ Letter from Seth Olson, Dep't Chair, Dep't of Counselor Educ., SHSU, to Dickerson (Sept. 8, 2020) (on file with author).

⁵ *Id.*

⁶ *Id.*

⁷ Letter from Jeffrey Sullivan, Program Dir., Clinical Mental Health Counseling, SHSU, to Dickerson (Mar. 10, 2021) (on file with author).

⁸  rainbow hoe  (@AliceBangz), TWITTER (Apr. 12, 2021, 6:09 PM), <https://twitter.com/AliceBangz/status/1381746238022938626>.

⁹  rainbow hoe  (@AliceBangz), TWITTER (Apr. 12, 2021, 7:11 PM), <https://twitter.com/AliceBangz/status/1381746943370653701>.

¹⁰ Email from Olson to Dickerson (Apr. 19, 2021, 4:33 PM) (on file with author).

¹¹ Letter from Olson to Dickerson (May 5, 2021) (on file with author).

¹² *Id.*

II. SHSU Dismissed Dickerson in Violation of Her First Amendment Rights

Dickerson’s dismissal from the program was motivated by her tweets criticizing the university’s response to a faculty member’s conduct. Whatever past concerns SHSU faculty and administrators may have had—which also largely involve Dickerson’s exercise of expressive rights—the public university’s dismissal of Dickerson due to public criticism serves no legitimate pedagogical interest. Suppressing criticism of a public university because the criticism is purportedly unprofessional violates fundamental First Amendment obligations.

A. *The First Amendment binds Sam Houston State University.*

It has long been settled law that the First Amendment is binding on public universities like SHSU.¹³ Accordingly, the decisions and actions of a public university—including but not limited to pursuit of disciplinary sanctions,¹⁴ recognition and funding of student organizations,¹⁵ interactions with student journalists,¹⁶ conduct of police officers,¹⁷ and maintenance of policies implicating student and faculty expression¹⁸—must be consistent with the First Amendment.

B. *The First Amendment protects the right to offend.*

While Dickerson’s tweet may have been offensive to ██████████ and others at SHSU, it remains protected expression. This is because, whether speech is protected by the First Amendment is “a legal, not moral, analysis.”¹⁹

The United States Supreme Court has repeatedly, consistently, and clearly held that expression may not be restricted on the basis that others find it to be offensive. This core First Amendment principle is why the authorities cannot outlaw burning the American flag,²⁰ punish the wearing of a jacket emblazoned with the words “Fuck the Draft,”²¹ or penalize parodies depicting a pastor losing his virginity to his mother in an outhouse.²²

¹³ *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).

¹⁴ *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 667–68 (1973).

¹⁵ *Bd. of Regents of the Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 221 (2000).

¹⁶ *Stanley v. Magrath*, 719 F.2d 279, 282 (8th Cir. 1983); *see also Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829–30 (1995).

¹⁷ *Glik v. Cunniffe*, 655 F.3d 78, 79 (1st Cir. 2011).

¹⁸ *Dambrot v. Central Mich. Univ.*, 55 F.3d 1177 (6th Cir. 1995).

¹⁹ *Animal Legal Def. Fund v. Reynolds*, 353 F. Supp. 3d 812, 821 (S.D. Iowa 2019).

²⁰ *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (burning the American flag was 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”).

²¹ *Cohen v. California*, 403 U.S. 15, 25 (1971).

²² *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 50 (1988).

This principle applies with particular strength to public universities. Take, for example, a student newspaper's front-page uses of a vulgar headline ("Motherfucker Acquitted") and a "political cartoon . . . depicting policemen raping the Statue of Liberty and the Goddess of Justice."²³ These words and images—published at the height of the Vietnam War—were no doubt deeply offensive to many at a time of deep polarization and unrest. Yet, "the mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of 'conventions of decency.'"²⁴

That Dickerson may have offended ██████████ by posting about her experiences with the professor online is of no importance to the First Amendment analysis. It also does not matter for purposes of First Amendment protection that Dickerson used harsh language, such as calling the situation "bullshit." Instead, this is exactly the type of caustic language the Supreme Court has anticipated when determining that even hurtful and offensive speech is protected.

C. The First Amendment protects criticism of public institutions.

The First Amendment's protection is at its peak when a speaker discusses public institutions and officials—the core political speech our First Amendment right serves to protect. "[I]t is a prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions."²⁵ The Supreme Court has rightly affirmed that "debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials[.]"²⁶ These rights serve not only the individual speaker's interest in airing their views, but also the public's interest in learning about the conduct of public institutions and their agents—particularly when they involve allegations of abusive conduct and gender discrimination.

Against this backdrop, the university's self-interest in channeling student speech into private grievance procedures—or otherwise penalizing a student as "unprofessional" for criticizing her institution and its faculty—fails First Amendment scrutiny.

Dickerson's speech was outside of the classroom, did not involve counseling clients, did not disclose confidential information, and only criticized the way the university addressed her concerns. The university's interest in policing the civility of student expression outside of the classroom environment is low, as "conflict is not unknown . . . given the inherent autonomy of tenured professors and the academic freedom they enjoy."²⁷ While institutions understandably prefer civility, "the desire to maintain a sedate academic environment does

²³ *Papish*, 410 U.S. at 667–68 (1973).

²⁴ *Id.* at 670.

²⁵ *Bridges v. California*, 314 U.S. 252, 270 (1941).

²⁶ *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

²⁷ *Hulen v. Yates*, 322 F.3d 1229, 1239 (10th Cir. 2003).

not justify limitations on” expressive rights, including those posed in “vigorous, argumentative, unmeasured, and even distinctly unpleasant terms.”²⁸

Further, the university’s interest in dismissing Dickerson on the basis of her *prior* speech is particularly dubious: SHSU had accepted Dickerson’s candidacy after and with full knowledge of its earlier concerns, and only dismissed her after—and expressly because of—her tweets. It is clear, therefore, that the revocation was not predicated upon the university’s earlier concerns, but instead on the content of her speech on social media.

The university’s complaint that Dickerson did not cabin her concerns to “appropriate channels” is particularly concerning. A university cannot require that student criticisms of colleagues, faculty, or administrators be confined to private fora. If it could do so, a broad range of student speech on other important concerns would be subject to punishment because it was shared with others—a trusted friend, colleague, journalist, or the public—instead of going through the university’s preferred “channel.” Universities—including SHSU—maintain channels to report sexual assault, discriminatory conduct, or violation of any university policy²⁹ or criminal law. Funneling student concerns such that they will only be heard by administrators is incompatible with the First Amendment’s interest in informing the public about the activities of the institutions it endows.

That is pointedly true where, as here, a student has previously reported these very concerns to university administrators. Even in the context of public employment, where the employer has broader interests in regulating employee speech than that of students or the general public, the Supreme Court has indicated that requiring employees to submit complaints *before* “bringing the complaints before the public” is permissible—if ever—only pursuant to “narrowly drawn grievance procedures.”³⁰ Dickerson, by contrast, had already brought the matter to the attention of administrators and the university’s grievance policy does not purport to suggest that grievances must be kept confidential.³¹ Moreover, as a student, Dickerson is afforded a substantially broader range of expressive rights than employees performing their duties. If SHSU could not mandate that an employee refrain from publicly criticizing the university, it most certainly cannot compel a student to remain silent on pain of dismissal.

Further, by alleging that Dickerson’s tweet did not exercise “discretion” in “faculty-student relationships” and instead “show[ed] disrespect for others,” SHSU takes its professionalism policy to absurd ends. If these policies indeed mandate that students respect faculty who refer

²⁸ *Rodriguez v. Maricopa Cty. Cmty. Coll. Dist.*, 605 F.3d 703, 709 (9th Cir. 2009) (cleaned up).

²⁹ SAM HOUSTON STATE UNIV., *Student Complaint Process*, <https://online.shsu.edu/campus/policies/student-complaint-process.html> (last visited May 18, 2021).

³⁰ *Pickering v. Bd. of Educ.*, 391 U.S. 563, 572 n.4 (1968).

³¹ SAM HOUSTON STATE UNIV., *Student Grievance Procedures*, https://www.shsu.edu/dept/dean-of-students/std_grievance_proc.html (last visited May 18, 2020); *see, e.g., Jordan v. Cagle*, 474 F. Supp. 1198, 1215 (N.D. Miss. 1979) (because teacher had brought concerns to attention of administrators, his failure to “follow to the letter” and “comply literally” with the grievance policy did not justify his non-renewal).

to them as “worthless cunt[s]” while not requiring similar respect to flow in the other direction, these restrictions not only violate students’ First Amendment rights, but also basic notions of fairness and dignity.

III. SHSU Must Reinstate Dickerson’s Candidacy in the Counselor Education Program

SHSU cannot impose punishment against a student for sharing concerns about its programming, including taking to Twitter to air grievances with a professor. It appears SHSU has dismissed Dickerson due to a tweet in which she used strong language and shared an experience she had with an SHSU professor. Regardless of the language she chose, this tweet was protected by the First Amendment.

To the extent Dickerson’s dismissal from the program is predicated upon any First Amendment-protected expression, this dismissal must be reversed. Given the urgent nature of this matter, we request receipt of a response to this letter no later than the close of business on Tuesday, May 25, 2021.

Sincerely,



Lindsay Rank

Program Officer, Individual Rights Defense Program

Cc: Kathleen Rice, Associate Dean of Graduate Studies
Jeffrey Sullivan, Program Director: Clinical Mental Health Counseling
Seth Olson, Department Chair, Department of Counselor Education
Stacey Edmonson, Dean, College of Education

Encl.

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, Phelan Edain Dickerson, born on ██████████, do hereby authorize Sam Houston State University (the “Institution”) to release to the Foundation for Individual Rights in Education (“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).

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:

ECAC18CB7751485...

Student's Signature

5/19/2021

Date