



March 3, 2026

Stephanie A. Roth
Office for Equal Access
Vanderbilt University
2100 West End Avenue, Suite 700
Nashville, Tennessee 37203

Sent via U.S. Mail and Electronic Mail (stephanie.a.roth@vanderbilt.edu)

Dear Ms. Roth:

Thank you for taking the time to meet with me in December 2025 regarding Vanderbilt's investigation of Paulo Nicoli and Benjamin Paolucci for discriminatory conduct based on allegations—which Nicoli and Paolucci deny—that they made various offensive comments. In light of the continued investigation, including the recently issued investigative reports, we write to again stress our concern with Vanderbilt's investigation of Nicoli and Paolucci for their protected speech.

FIRE appreciates that Vanderbilt is one of the few institutions in the country whose policies earn a “green light” rating from FIRE. However, Vanderbilt's laudable policies cannot reasonably be used to justify this investigation. We therefore urge Vanderbilt to drop the investigations and, if necessary, modify its process for dealing with student complaints concerning protected speech.

This case arose out of an interpersonal conflict among suitemates. In September 2025, Nicoli requested assistance from his resident advisor to resolve an ongoing dispute with his suitemates over damage to his personal property. The RA failed to intervene, so Nicoli complained to the housing office. Upon learning of Nicoli's report to the housing office, his suitemates filed complaints against Nicoli and Paolucci with your office. The complaints accused Nicoli and Paolucci of, among other things, repeatedly uttering slurs in the suite, shouting “Deport them all!” in an Uber, liking or sharing social media posts featuring Adolf Hitler and/or Nazis, and repeatedly shouting “Heil Hitler” in the suite.¹ On October 23,

¹ Letter from E Jacob Cummings, Equal Opportunity and Access Director, to Paulo Nicoli, student (Oct. 23, 2025) (on file with author); letter from Cummings to Benjamin Paolucci, student (Oct. 23, 2025) (on file with author). Other specific allegations against one or both students include saying that he wished the U.S. “never instituted a race-blind immigration policy” and should reinstate racial quotas;” telling another student that “he believes race and IQ are biologically linked” and “African-Americans or Black people, on average, have a lower IQ than other races;” stating that female guests were welcome in the suite “only if they were hot;”

Vanderbilt’s Equal Opportunity and Access Office notified Nicoli and Paolucci that it had initiated an investigation into whether the various comments attributed to them in the complaints violated the Student Discrimination Policy.² On February 11, 2026, your office issued investigative reports based on its interviews with alleged witnesses, and Nicoli and Paolucci submitted their responses to the reports on February 24.³

Vanderbilt’s investigation and pursuit of disciplinary sanctions against Nicoli and Paolucci violate its stated commitment to expressive freedom. University policy enshrines Vanderbilt’s commitment to “institutional neutrality, academic freedom and freedom of expression” and recognizes that “[f]reedom of expression applies even when that expression directly challenges the beliefs and ideas of another and even when that expression may be deemed disagreeable or possibly even offensive.”⁴ These commitments to free speech—and a reasonable student’s interpretation of these commitments—are informed by decades of First Amendment jurisprudence and contract law.⁵

The alleged comments attributed to Nicoli and Paolucci are protected under First Amendment standards. The “bedrock principle underlying” freedom of speech is that it may not be restricted on the basis that others find it offensive.⁶ “As a Nation we have chosen ... to protect even hurtful speech on public issues to ensure that we do not stifle public debate.”⁷ This is particularly true in the context of a university, where “conflict is not unknown”⁸ and “dissent is expected and, accordingly, so is at least some disharmony.”⁹

sharing or liking a social media post promoting the “Great Replacement” theory; sharing or liking a social media “post suggesting Jewish individuals control major corporations, news outlets, and economic institutions;” and laughing when another student made a joke about burning the Pride flag to make a rainbow fire. We understand you may have additional relevant information and invite you to share it with us. To this end, please find enclosed an executed privacy waiver authorizing you to share information about this matter.

² Letter from Cummings to Nicoli, *supra* note 1; letter from Cummings to Paolucci, *supra* note 1; *see also* *Student Discrimination Policy*, VANDERBILT UNIV. (eff. Aug. 9, 2024), <https://www.vanderbilt.edu/eoa/wp-content/uploads/sites/91/2025/09/sd-policy-20240809.pdf> [<https://perma.cc/5USF-9KKQ>].

³ Investigative Report re Guardian Case No. 12842 Paulo Nicoli (Feb. 11, 2026) (on file with author); investigative report re Guardian Case No. 12842 Benjamin Paolucci (Feb. 11, 2026) (on file with author).

⁴ *Student Handbook*, Administrative Policies, Freedom of Expression, VANDERBILT UNIV., <https://studenthandbook.vanderbilt.edu/administrative-policies#882> [<https://perma.cc/93GJ-AGT4>].

⁵ *Doherty v. S. Coll. of Optometry*, 862 F.2d 570, 577 (6th Cir. 1988) (“In construing the terms of an implied contract between a university and a student, Tennessee courts would apply deferential standard of reasonable expectation to determine what meaning the university should reasonably expect the student to give it.”).

⁶ *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (burning the American flag is protected by the First Amendment based on the “bedrock principle” that government actors “may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable”).

⁷ *Snyder v. Phelps*, 562 U.S. 443, 448, 461 (2011) (holding signs outside of soldiers’ funerals reading “Thank God for Dead Soldiers,” “Thank God for IEDs,” and “Fags Doom Nations” was expression protected by the First Amendment).

⁸ *Hulen v. Yates*, 322 F.3d 1229, 1239 (10th Cir. 2003).

⁹ *Higbee v. E. Mich. Univ.*, 399 F.Supp.3d 694, 704 (E.D. Mich. 2019).

Again, Nicoli and Paolucci firmly deny the allegations. But even hateful or offensive expression is protected unless it meets the high standard for discriminatory harassment articulated in *Davis v. Monroe County Board of Education*.¹⁰ There, the Supreme Court established a strict definition of peer harassment in the higher-ed context: expression must be unwelcome, discriminatory on the basis of a protected status, and “so severe, pervasive, and objectively offensive that it can be said to deprive the victim[] of access to the educational opportunities or benefits provided by the school.”¹¹

The allegations against Nicoli and Paolucci fall well short of this high bar, constitute fully protected expression under First Amendment standards, and thus cannot justify a speech-chilling investigation under the university’s free expression policy. The allegations are a grab bag of comments regarding different protected groups, ranging from social media “likes” of edgy jokes, juvenile insults, and profanity, to remarks expressing political or policy views, seemingly uttered at different times and places and witnessed by different people. The alleged speech does not target or even refer to any individual students, with two exceptions—one comment about a student allegedly made in a private message to an entirely *different* student and one comment allegedly made directly to a female student about exercises to “make her boobs perkier.”¹² An assortment of unrelated alleged comments about a variety of unconnected and usually unidentifiable people cannot deprive anyone of the educational opportunities or benefits Vanderbilt provides.¹³

Vanderbilt has a responsibility to prevent discriminatory harassment, but in doing so it must not sacrifice its commitment to protect free speech. An investigation and pursuit of disciplinary sanctions based on protected expression is likely to chill student speech, even if the process ultimately concludes in favor of the speaker, because such a process implicitly threatens punishment.¹⁴ The question is not whether the institution actually imposes formal

¹⁰ 526 U.S. 629, 650 (1999). Student speech may also be unprotected if it falls into any of the “historic and traditional categories of unprotected speech, such as obscenity, defamation, incitement, or fighting words.” *United States v. Stevens*, 559 U.S. 460, 468–69 (2010). Nicoli’s and Paolucci’s alleged expression does not meet the criteria for any of these categories.

¹¹ *Davis*, 526 U.S. at 650.

¹² The Office of Equal Opportunity and Access alleged that Nicoli “referred to a female student as the ‘biggest, smelliest, whore [he] had ever met’ in a message to another student.” Letter from Cummings to Nicoli, *supra* note 1 at 2.

¹³ To deprive a student of educational opportunities or benefits, the speech needs to create a concrete, negative effect, such as a change of study habits, school transfer, a drop in grades, missing school, or being diagnosed with a behavioral or anxiety disorder. *See Davis*, 526 U.S. at 654; *Nungesser v. Columbia Univ.*, 169 F.Supp.3d 353, 368 (S.D.N.Y. 2016); *Mandel v. Bd. of Trustees of Cal. State Univ.*, 2018 WL 1242067, at *20 (N.D. Cal. Mar. 9, 2018).

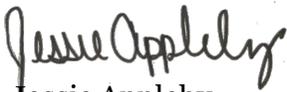
¹⁴ *See, e.g., Levin v. Harleston*, 966 F.2d 85, 89 (2d Cir. 1992) (threat of discipline implicit in college president’s creation of ad hoc committee to study whether professor’s outside speech could be considered misconduct “was sufficient to create a judicially cognizable chilling effect on [the professor’s] First Amendment rights”); *White v. Lee*, 227 F.3d 1214, 1228 (9th Cir. 2000) (investigation into individuals’ activities based on their protest against housing project created chilling effect, even though no materials were seized and no sanctions were ever pursued).

sanctions, but whether its actions would “chill or silence a person of ordinary firmness from future [expressive] activities.”¹⁵ Vanderbilt’s actions in this case would most certainly do so.

Instead, where—as here—a complaint appears to allege no more than protected speech, the correct approach is to have administrators conduct a cursory, internal review. If the review confirms the alleged speech is protected, Vanderbilt can close the matter without ever notifying the speakers—thereby avoiding a chilling effect—while offering support to the complainant.¹⁶

FIRE appreciates Vanderbilt’s leadership in acting to protect free inquiry on campus, and we regret that Vanderbilt’s investigation of Nicoli and Paolucci for their protected speech will result in a penalty in the next College Free Speech Rankings. Like other institutions, though, Vanderbilt can mitigate this penalty in its entirety by immediately closing the investigation and ceasing any further pursuit of disciplinary sanctions. We request a substantive response to this letter no later than March 17, confirming Vanderbilt will close the investigation and amend its process for reviewing student complaints about protected speech.

Sincerely,



Jessie Appleby
Program Counsel, Campus Rights Advocacy

Cc: Darren Reisberg, Vice Chancellor for Administration
Daniel Diermeier, Chancellor

Encl.

¹⁵ *Mendocino Envtl. Ctr. v. Mendocino Cty.*, 192 F.3d 1283, 1300 (9th Cir. 1999) (institutional response short of formal punishment can be unconstitutional if it “would chill or silence a person of ordinary firmness from future First Amendment activities”); *Brodheim v. Cry*, 584 F.3d 1262, 1271 (9th Cir. 2009) (official violated the First Amendment merely by “intimat[ing] that some form of punishment or adverse regulatory action would follow”); *Speech First, Inc. v. Schlissel*, 939 F.3d 756, 765 (6th Cir. 2019) (bias response team’s ability to refer student-reported “bias incidents” to the Office of Student Conflict Resolution for investigation and invitations to accused students to voluntarily meet with administrators both “objectively chill speech”).

¹⁶ See Graham Piro & Alex Morey, *Report: Stanford student may need to ‘take accountability,’ ‘acknowledge harm’ for reading Hitler’s ‘Mein Kampf’*, FIRE (Jan. 25, 2023), <https://www.thefire.org/news/report-stanford-student-may-need-take-accountability-acknowledge-harm-reading-hitlers-mein>; Haley Gluhanich, *VICTORY: Stanford adopts FIRE recommendation, will no longer notify students accused of engaging in protected speech*, FIRE (Apr. 18, 2023), <https://www.thefire.org/news/victory-stanford-adopts-fire-recommendation-will-no-longer-notify-students-accused-engaging>.