



**SOUTHEASTERN LEGAL FOUNDATION**  
Rebuilding the American Republic®

September 1, 2020

**VIA EMAIL**

Dr. Patricia A. Whitely  
Vice President for Student Affairs  
University of Miami  
pwhitely@miami.edu

Dr. Ryan C. Holmes  
Associate Vice President for Student Affairs  
Dean of Students  
University of Miami  
ryanholmes@miami.edu

Re: Unconstitutional First and Fourth Amendment Violations: Campus COVID-19 Policies

Dear Dr. Whitely and Dr. Holmes:

We are writing to follow up about the letter we sent on August 17, 2020, regarding the University of Miami COVID-19 Reporting Form.<sup>1</sup> As we stated in our letter, several citizens are concerned about the constitutional infirmities with the Reporting Form. For example, the Reporting Form is vague and overbroad; it will have an unconstitutional chilling effect on student speech; and it may violate students' Fourth Amendment rights against searches and seizures.

Although the University of Miami has not yet responded to our request, the University President recently issued a statement regarding student behavior.<sup>2</sup> The President stated that the University has already suspended students for their on and off campus behavior. However, the University still has not clarified what constitutes unsafe behavior, nor has it addressed any of the other constitutional issues presented in our last letter. It appears that the Reporting Form and all related policies are still in place.<sup>3</sup>

Protecting the public health is paramount during these unprecedented times, but these protections must not come at the expense of our Constitution. It is imperative that students understand how the University intends to protect their constitutional rights while carrying out its COVID policies. Thus, a response from the University is urgently needed.

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<sup>1</sup> See 'Canes Care for 'Canes Form, attached as Exhibit A.

<sup>2</sup> See A Message from President Julio Frenk, attached as Exhibit B.

<sup>3</sup> See Exhibit A; *see also* Report a Concern, attached as Exhibit C.

University of Miami Student Affairs  
September 1, 2020  
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Yours in Freedom,

A handwritten signature in black ink that reads "Kimberly S. Hermann". The signature is written in a cursive style with a large, stylized 'K' and 'H'.

Kimberly S. Hermann  
General Counsel  
Southeastern Legal Foundation

CC: Student Health Service (studenthealth@miami.edu)  
Nancy Lee Ryan (nryan@miami.edu)  
Nicole Sanchez (nas149@miami.edu)  
Laura Denise Gonzalez (lxg604@miami.edu)

# **EXHIBIT A**



## 'Canes Care for 'Canes

If this is an emergency or there is an immediate threat of harm to a student or the community dial 9-1-1, or call UMPD at 305-284-6666. This system should not be used to file emergency reports. Submitted reports are responded to by the next business day.

### Who is completing this report?

The 'Canes Care for 'Canes online report allows students to report concerns that they have about their fellow Canes while remaining anonymous, if they choose to.

[Enable additional features by logging in. \(https://cm.maxient.com/reportingform.php?UnivofMiami&layout\\_id=2&promptforauth=true\)](https://cm.maxient.com/reportingform.php?UnivofMiami&layout_id=2&promptforauth=true)

Your name:

Your phone number:

Your email address:

Nature of this report (Required):

## Who is the student you are concerned about?

Name

Phone (if known)

Email (if known)

Does this person live on Campus?

## Description of Your Concerns

This form should not be used for emergencies; information reported here will be addressed on the next business day.

Please describe your concern with enough detail for University staff to understand what the issues are that need to be addressed. An example description might read:

*Two weeks ago Stephanie told me she was upset about a break up. Since then I noticed that she has been acting differently, not going to class or her club meetings that we have together. She doesn't have meals with me or our other floormates anymore and I hardly see her because she comes back to the room at weird hours. I'm just not sure what to do.*

*Describe your concern in detail (Include nature of concern, description of behaviors, observable physical signs, events that have occurred and any other pertinent information) (Required)*

Is your concern related to COVID/Coronavirus? (Required)

- Yes
- No

What is your relationship to this individual? (Required)

Please Choose...

How long have you been aware of this concern?

Please Choose...

How frequently, this semester, has the student exhibited the concerning behavior?

Please Choose...

Please list the clubs/organizations the student is involved in, especially if any of the concerns have been seen while participating in these groups. This information may be used when a staff member reaches out to a student and helps us understand the issues in context.

Which University faculty or staff have you discussed this concern with? (if any)

**Disclaimer:**

The 'Canes Care for 'Canes online report allows students to report concerns that they have about their fellow 'Canes while remaining anonymous if they choose.

(Required)

- I agree with the above disclaimer and I understand that the form I am submitting is not for an emergency.

Submit report



**EXHIBIT B**

## A Message from President Julio Frenk

August 24, 2020



*Below, for your reference, is the full text of President Julio Frenk's video message (above) to the University of Miami community.*

One week ago, classes began for the Fall 2020 semester. In my capacity as a member of the faculty, I taught the first session of my course on global health in person last Tuesday evening. Some of my students were in the classroom, others logged in remotely, and as we all adapted to this hybrid modality, we were enriched by our interaction with one another.

In my capacity as president, adapting and responding to changing circumstances remains the order of the day. I continue to work closely with leaders across all our campuses, as we monitor the pandemic and make decisions to keep our community safe. Today I want to address three recent developments that may be top of mind for many, as the semester continues.

First, we have all seen reports of other universities having to reverse course on in-person instruction and on-campus activities due to outbreaks of coronavirus. Such news has understandably caused some anxiety. I want to assure you that we are in touch with our colleagues across the country—including at

institutions finding themselves in this situation—and are learning from their experience during this unprecedented time in higher education. The U remains open for on-campus instruction.

I want to thank all of you for the way you are embracing our strategy to fight COVID-19 by wearing face coverings, maintaining social distance, and cooperating with our dedicated team to care for 'Canes and our entire community. We are taking our pledge to one another seriously, as we implement our carefully thought out plans.

Those whose behavior indicates that they are not honoring their commitment to the community have begun meeting with the consequences of their poor choices. We have already had to take the unfortunate measures of asking students who are not following public health directives to leave our residence halls and initiating suspensions when appropriate. We will continue to monitor our 'Canes Care for 'Canes website, as well as student behavior on or off campus, and we will not hesitate to enforce disciplinary procedures when measures aimed at protecting our students, faculty, and staff are flouted.

The second issue that may have caused you concern is that before the first week of classes had ended, we issued a notice regarding the first cases of coronavirus reported on campus. As I have stated before, it would have been unrealistic to assume that there would be no cases of COVID-19 this fall, on our campus or anywhere else in the world. What we *can* accomplish if we all work together is avoiding the type of broad outbreak that would require us to shut down campus.

When a pattern of infection began to arise at one of our residence halls, we immediately took the necessary steps to keep those cases from spreading, so we quarantined the two affected floors, utilizing testing, tracing, and tracking to contain the incident. Fortunately, at this time all community members who have tested positive are doing well, and those who may have been exposed have safely self-isolated. Given the need for patient privacy, we will not comment on each individual coronavirus case on campus, but we will keep the community fully informed of the steps we are taking to protect them.

Our UTrace contact tracing team is well-equipped to identify any close contact that members of the community may have with infected individuals. Rest assured that if the UTrace team has not reached out to you, you have not been determined to be a close contact with the positive cases and are at extremely low risk, provided you continue to adhere to the mandatory preventive measures on and off campus. In addition, our world-class medical facilities are uniquely capable and well-prepared to respond to an influx in cases and continue to have the capacity necessary to address any health issues that may

emerge among those who tested positive.

I recognize as well that during a time of uncertainty, we all want accurate and actionable information, which brings me to the third significant development I want to share with you this week. As promised, later today we will launch our University of Miami COVID-19 Dashboard. This tool will allow the entire University and the public to track four important indicators regarding coronavirus at UM: the number of new cases per day, the number of new persons in isolation or quarantine, the number of tests performed, and the number of new hospitalizations.

The data will be shown separately for faculty and staff and for students—with further distinctions, when relevant, between on- and off-campus residence. We will also report separately for the Coral Gables and Marine campuses and for the Medical Campus. You will be able to see not only a snapshot in time, but the trends for each of these indicators reporting the relevant rolling averages across time. The data will be updated on a daily basis.

I do want to caution against taking the reported information out of context. As unsettling as it may have been to hear of confirmed infections on campus, we have been preparing for this exact situation since January, when UHealth began planning to treat COVID patients. We are taking all possible precautions, including disinfecting areas of campus and reaching out to UM community members who may have come into contact with the affected individuals, so they are able to take the necessary steps to protect themselves and others, including follow-up testing and self-isolation.

We continue to monitor the situation on campus closely using testing, contact tracing, and tracking, as well as through the UHealth Personalized Medicine Program, which provides around-the-clock support to students, faculty, and staff. You will soon receive a more detailed description of how we are testing, tracing, and tracking. I encourage you to familiarize yourself with our approach, which will empower you to do your part by giving you a sense of the role you can play in keeping yourself and others safe.

As the semester continues, we must never let our guard down. If each of us does the right thing, we will keep each other safe and continue to have a rewarding experience this year.

A handwritten signature in black ink, appearing to read "Lent", enclosed within a large, loopy, handwritten flourish that extends downwards and to the right.

This email was sent by: **University of Miami - Communications**  
6200 San Amaro Drive, Suite 400 Coral Gables, FL, 33146, United States

# **EXHIBIT C**



# Report A Concern

You can make a difference in the life of a fellow 'Cane by connecting them to someone who can help. This tool allows you to remain anonymous if you so choose. If you know a fellow 'Cane in need, take action now to get them the help and support they need to be successful. **If this is an emergency or there is an immediate threat of harm to a student or the community contact University Police at 305-284-6666 or 911.**

Additionally, in response to the COVID-19 global pandemic, members of the University community are asked to do their part in helping to slow the spread by practicing a variety of healthy behaviors including physical distancing, wearing face coverings, as well as frequently washing your hands and using hand sanitizer. Furthermore, students must not host or attend large gatherings—**whether on or off campus**—where physical distancing cannot be maintained. Students are encouraged to report concerns about unsafe behaviors to 'Canes Care for 'Canes by completing the form below.

**SUBMIT A CONCERN** ([https://cm.maxient.com/reportingform.php?UnivofMiami&layout\\_id=2](https://cm.maxient.com/reportingform.php?UnivofMiami&layout_id=2))

The reports are reviewed by designated University administrators who will reach out and respond to the student of concern by the next business day. It is our goal to intervene before the student reaches a crisis level. If you are a University faculty, staff, or administrator, we encourage you to reach out directly to the [Dean of Students Office](http://miami.edu/dean-students) (<http://miami.edu/dean-students>), or [Office of the Vice President for Student Affairs](http://studentaffairs.miami.edu) (<http://studentaffairs.miami.edu>). Anyone providing false information may be subject to University disciplinary action.