



560 W. Crossville Rd., Ste. 104
Roswell, Georgia 30075
www.SLFLiberty.org

June 11, 2025

VIA EMAIL

Moez Limayem, Ph.D.
President
University of North Florida
president@unf.edu

Re: Sexual Misconduct and Title IX Sexual Harassment Policies: Impact on Free Speech and Title IX Protections

Dear Dr. Limayem:

We write to you today, in the midst of Title IX Month, regarding University of North Florida's (UNF) Sexual Misconduct and Title IX Sexual Harassment Regulation, Reg. No. 1.0050R ("Title IX Regulation"),¹ and its Non-Discrimination, Equal Opportunity and Inclusion Regulation, Reg. No. 1.0040R ("Non-Discrimination Regulation").² The State of Florida is leading the nation in steadily moving away from woke ideologies that undermine basic biological fact, pit racial groups against each other, and subvert our nation's fundamental civil rights laws. UNF's Title IX Regulation and Non-Discrimination Regulation, however, **erase protections for men and women on campus in favor of advancing gender ideology**. And they do so in a manner that **directly conflict with the First Amendment and President Trump's recent executive orders that reinforce statutory Title IX protections**.

While one may expect to see policies that punish individuals for their belief in biological sex out of colleges in states like California, Maine, and even Colorado, the continued existence of policies which adopt and promote concepts of radical gender ideology in Florida is shocking. This is especially true given Governor DeSantis's steadfast efforts to root out wokeness, political indoctrination, and gender ideology theory in higher education and to refocus public universities across the state on their classical mission of educating the young minds of tomorrow's republic. In furtherance of this goal, Governor DeSantis has commented that Florida has a "right" to "put[] people in positions to make sure that those institutions are serving a mission that is consistent with the state's best interests."³ Implementing this sentiment, just last week, the Board of Governors

¹ <https://www.unf.edu/regulations-policies/01-general/1-0050R.html>

² <https://www.unf.edu/regulations-policies/01-general/1-0040R.html>

³ First Coast News, *Florida Gov. DeSantis speaks about Digital Bill of Rights* at 53:21–53:48, YouTube (Feb. 15, 2023), https://www.youtube.com/watch?v=4eIXG_FeCcg.

rejected the appointment of Santa Ono as President of the University of Florida in part because of his past support of divisive and radical DEI initiatives.⁴

UNF's policies raise serious First Amendment concerns and will leave students who believe in the biological reality that only two sexes exist and that a man cannot choose to be a woman wondering when and how they will be punished for speaking the truth. Will they be punished for speaking up when a man who “identifies” as a woman undresses in the women’s locker room? Or for using biologically correct pronouns? Or for simply stating that men should not compete in women’s sports? UNF’s policies are both vague and overbroad, causing students to remain silent. Chilling speech is unconstitutional. So is compelling speech, which is exactly what happens every day when students are faced with punishment should they refuse to use incorrect pronouns or names. A college campus should be a “marketplace of ideas” where students are exposed “to th[e] robust exchange of ideas which discovers truth”⁵—not a place where students must conform to falsehoods about transgenderism.

We recognize that many educational institutions are currently reviewing their policies following (1) recent litigation resulting in the vacatur of the Biden Title IX Re-Write entitled *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 89 Fed. Reg. 33474 (Apr. 29, 2024),⁶ (2) executive orders and presidential actions issued by President Trump;⁷ and (3) a “Dear Colleague” letter issued by the United States Department of Education.⁸ SLF is also aware that UNF is covered by a preliminary injunction issued by the District of Kansas that blocks the Department of Education from enforcing the Biden Administration Final Rule.⁹

Southeastern Legal Foundation (SLF), founded in 1976, is an Atlanta-based national, nonprofit legal organization that works to Rebuild the American Republic through litigation and public education. Through its 1A Project, SLF educates students about First Amendment rights on college campuses and advocates for free speech on college campuses. SLF also drafts legislative models and educates the public on key policy issues. SLF appears frequently before the Supreme Court and regularly represents college students and student organizations challenging university policies that infringe on First Amendment rights. We have also provided legislative testimony regarding college students’ First Amendment rights.

⁴ See Julie Gomez & John Wisely, *Santa Ono’s bid to become UF president rejected: Here’s what to know*, USA Today (June 4, 2025), <https://www.usatoday.com/story/news/education/2025/06/04/santa-ono-uf-president-rejected/84024956007/>.

⁵ *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967).

⁶ See *Tenn. v. Cardona*, No. 2:24-072-DCR, 2025 U.S. Dist. LEXIS 6197 (E.D. Ky. Jan. 9, 2025); see also *Caroll Indep. Sch. Dist. v. U.S. Dep’t of Educ.*, Civil Action No. 4:24-cv-00461-O, Order (N.D. Tex. Feb. 19, 2025), ECF No. 86.

⁷ See *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*, Executive Order 14168, 90 Fed. Reg. 8615 (Jan. 20, 2025); see also *Keeping Men Out of Women’s Sports*, Executive Order 14201, 90 Fed. Reg. 9279 (Feb. 5, 2025).

⁸ Dear Colleague Letter, United States Department of Education Office for Civil Rights (Feb. 4, 2025) (available at: <https://www.ed.gov/media/document/title-ix-enforcement-directive-dcl-109477.pdf>).

⁹ See *Kan. v. Dep’t of Educ.*, 739 F. Supp. 3d 902 (D. Kan. 2024).

SLF writes this letter to seek reassurance that UNF will protect and promote the free speech and freedom of expression rights of its students. We trust that UNF was unaware that these policies remain, that this letter provides UNF some guidance in its reexamination of its policies, and that UNF will swiftly work to revise its Title IX Regulation and its Non-Discrimination Regulation to bring them in line with current law and constitutional principles.

Factual Background

In April 2024, the Department of Education, under the Biden Administration, enacted a Final Rule entitled *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*. This Rule defined “sex” for purposes of Title IX to include gender identity and transgender status.¹⁰ It also amended the definitions governing “sexual harassment.” Before the Final Rule, Department of Education regulations defined sexual harassment to include “conduct determined by a reasonable person to be so severe, pervasive, *and* objectively offensive that it *effectively denies* a person equal access to the recipient’s education program or activity.”¹¹ The Final Rule employed a less-demanding standard and defined sexual harassment to include “conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe *or* pervasive that it *limits or* denies a person’s ability to participate in or benefit from the recipient’s education program or activity.”¹² Commentary to the Final Rule cited non-precedential legal authority for the proposition that using biological pronouns when identifying a transgender individual could qualify as a form of sexual harassment.¹³

UNF’s regulations mirror the enjoined and vacated Biden Administration Final Rule.

Looking first at UNF’s Non-Discrimination Regulation, it has a stated goal of “fostering and maintaining an environment of inclusiveness and equality” and advises that UNF intends to “broadly appl[y]” the regulation.¹⁴ Thereafter, the regulation provides protection against discrimination and harassment on bases including gender identity, gender expression, and sexual orientation.¹⁵ The regulation then uses language akin to, but more expansive than, the Biden Administration Final Rule to define “[h]arassment” as “unwelcome conduct toward an individual based on their protected class that is objectively offensive and sufficiently severe, *persistent or* pervasive as to deny *or limit* a student’s ability to participate in or benefit from the University’s educational programs or activities”¹⁶ And the regulation applies “both on- and off-campus.”¹⁷

¹⁰ See 89 Fed. Reg. at 33476, 33886–87.

¹¹ *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 85 Fed. Reg. 30026, 30574 (May 19, 2020) (emphasis added).

¹² 89 Fed. Reg. at 33884 (emphasis added).

¹³ 89 Fed. Reg. at 33516.

¹⁴ Non-Discrimination, Equal Opportunity and Inclusion Regulation, Reg. No. 1.0040R, Sec. I Objective & Purpose, University of North Florida (October 14, 2021) (available at: <https://www.unf.edu/regulations-policies/01-general/1-0040R.html>).

¹⁵ *Id.* at Sec. II Statement of Regulation; *see also id.* at Sec. III(F) Definitions (defining “[p]rotected classes” to include gender identity, gender expression, and sexual orientation).

¹⁶ *Id.* at Sec. III(C) Definitions, “Harassment” (emphasis added).

¹⁷ *Id.* at Sec. IV(A) Prohibition Against Discrimination, Harassment, and Retaliation, Application to All.

Turning to UNF's Title IX Regulation, it too advises that the University will "broadly appl[y]" the regulation.¹⁸ The regulation then defines "[s]exual [h]arassment" in a manner nearly identical to UNF's Non-Discrimination Regulation, to include a "*verbal, nonverbal, written, or electronic communication[] . . . that is objectively offensive and sufficiently severe, persistent, or pervasive so as to deny or limit an individual's ability to participate in or benefit from the University's educational programs or activities . . .*"¹⁹ The regulation then goes on to provide examples of "unwelcome conduct" that "may rise to the level of Sexual Harassment and/or Title IX Sexual Harassment," including "remarks about a person's clothing, body, or activities which places an individual in fear of imminent physical or *psychological* harm or injury" and "[i]ntentionally mis-gendering an individual in a manner that is severe or pervasive."²⁰

Analysis

UNF's use of a "sufficiently severe, pervasive, or persistent" standard, which is more aggressive and far-reaching than even the standard from the Biden Administration Final Rule, along with its misgendering example creates a regime that exceeds the purview of Title IX and that compels, restricts, and chills speech protected by the First Amendment.

A college campus is the "marketplace of ideas" where students are exposed "to that robust exchange of ideas which discovers truth."²¹ Indeed, freedom of speech and academic inquiry are "vital" on college campuses, because only through thoughtful debate and discourse can real education occur.²² This unique environment is why the Supreme Court has often likened students' free speech rights on their campuses to the most firmly guaranteed right of every person to speak their mind on public streets and in public parks.²³ While UNF tacitly states that it will not infringe on speech protected by the First Amendment,²⁴ the language of its regulations says otherwise.

I. The examples of harassment infringe on speech protected by the First Amendment.

Examples of sexual harassment provided in UNF's regulations include "remarks about a person's clothing, body, or activities which places an individual in fear of imminent physical or psychological harm or injury," and "[i]ntentionally mis-gendering an individual in a manner that

¹⁸ Sexual Misconduct and Title IX Sexual Harassment Regulation, Reg. No. 1.0050R, Sec. I Objective & Purpose, University of North Florida (October 15, 2021) (available at: <https://www.unf.edu/regulations-policies/01-general/1-0050R.html>).

¹⁹ *Id.* at Sec. III(A) Definitions, Definitions of Sexual Harassment (emphasis added). Of note, the regulation provides a separate definition for "Title IX Sexual Harassment," which includes "[u]nwelcoming conduct determined by a reasonable person to be so severe, and pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity." *Id.* If this were the only definition and the regulation did not go on to provide examples of "unwelcoming conduct," the regulation might not run afoul of the First Amendment.

²⁰ *Id.* at Sec. III(C) (emphasis added).

²¹ *Keyishian*, 385 U.S. at 603.

²² *Healy v. James*, 408 U.S. 169, 180 (1972) (quoting *Shelton v. Tucker*, 364 U.S. 479, 487 (1960)).

²³ See *Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 802–03 (1985); *Widmar v. Vincent*, 454 U.S. 263, 267 n.5 (1981).

²⁴ See Sexual Misconduct and Title IX Sexual Harassment Regulation at Sec. IV(D) Prohibition Against Sexual Misconduct, Protection for Freedom of Expression; Non-Discrimination, Equal Opportunity and Inclusion Regulation at Sec. IV(C) Prohibition Against Discrimination, Harassment, and Retaliation, Protection for Freedom of Expression.

is severe or pervasive.”²⁵ The first of these examples suffers from vagueness and overbreadth issues, thus chilling free speech. The second restricts protected speech outright while also, for all intents and purposes, compelling speech.

A. Remarks about a person’s clothing, body, or activities.

The First and Fourteenth Amendments prohibit unconstitutionally vague restrictions.²⁶ A restriction is unconstitutionally vague if it “either forbids or requires the doing of an act in terms so vague that [individuals] of common intelligence must necessarily guess at its meaning and differ as to its application.”²⁷ Vague regulations on speech chill not only speech targeted by the regulation but also protected speech in grey zones outside the regulation’s intended edges.

Legal precedent is clear that speech which is offensive and expresses dislike for a position or group, including name-calling, is protected under the First Amendment.²⁸ Even in the K-12 setting, where courts have said First Amendment interests may be weaker than the university setting, “[t]here is . . . no question that the free speech clause protects a wide variety of speech that listeners may consider deeply offensive, including statements that impugn another’s race or national origin or that denigrate religious beliefs.”²⁹ For this reason, Title IX does not prohibit “simple acts of teasing and name-calling among school children . . . even where these comments target differences in gender.”³⁰

Controlling precedent from the United States Court of Appeals for the Eleventh Circuit is equally clear. In *Speech First, Inc. v. Cartwright*, the Eleventh Circuit confronted a university discriminatory-harassment policy that provided protection based on “gender identity or expression” and prohibited “name-calling” and “conduct that may be humiliating.”³¹ The court held that the policy “objectively chills speech because its operation would cause a reasonable student to fear expressing potentially unpopular beliefs.”³² Likewise, because of the “policy’s astonishing breadth . . . and slipperiness” the court explained that it was “clear that a reasonable student could fear that his speech would get him crossways with the University, and that he’d be better off just keeping his mouth shut.”³³ Included among the protected speech the court concluded

²⁵ Sexual Misconduct and Title IX Sexual Harassment Regulation at Sec. III(B) Definitions, Examples of Sexual Harassment.

²⁶ *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972) (“It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined.”).

²⁷ *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1925).

²⁸ *Papish v. Bd. of Curators of Univ. of Mo.*, 410 U.S. 667, 670 (1973) (“We think *Healy* makes it clear that 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.’”); see also *Speech First Inc. v. Cartwright*, 32 F.4th 1110 (11th Cir. 2022) (discussed below).

²⁹ *Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200, 206 (3d Cir. 2001) (Alito, J., authoring).

³⁰ *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 652 (1999).

³¹ 32 F.4th at 1114 (quoting University of Central Florida policy).

³² *Id.* at 1121.

³³ *Id.* at 1122.

was swept up by the policy was the statement that “a man cannot become a woman because he ‘feels’ like one.”³⁴

UNF’s prohibition on “remarks about an individual’s clothing, body, or activities” falls within this category of protected speech. Comments about an individual wearing clothing that does not match his biological sex or for altering his body or appearance to masquerade as a female might deeply offend a transgender individual or be viewed as name-calling. But these statements are the exact type of speech protected under the First Amendment and *Cartwright*.

In a possible attempt to overcome this Eleventh Circuit binding precedent, UNF’s policy is limited to remarks “which place[] an individual in fear of imminent physical or psychological harm or injury,” But this limitation introduces vagueness to the regulation. First, it does not specify from what perspective—objective or subjective—must a remark cause “fear of imminent physical or psychological harm or injury.” If it is subjective, then the limitation is meaningless, and the example of sexual harassment falls back within *Cartwright*.

Second, the limiting language is very vague. While threats of physical violence are not protected speech under the First Amendment,³⁵ it is perplexing how commenting on an individual’s clothing or body could remotely cause one to anticipate imminent physical or psychological harm.³⁶ The regulation is all the vaguer where it advises that the UNF intends to apply it “broadly.” Thus, a student who wishes to express an opinion critical of a classmate dressing in drag is left to wonder if he will become the target of a sexual harassment investigation. Rather than find out, he is likely to self-censor.

B. Intentionally mis-gendering an individual

A more problematic example of unwelcome conduct amounting to sexual harassment is “[i]ntentionally mis-gendering an individual in a manner that is severe or pervasive.” This example precludes a student from using biologically accurate pronouns to identify a transgender individual while also, for all practical purposes, compels the use of “preferred pronouns.” Where pronouns convey a message of political and social significance regarding an individual’s ability to change their gender, this example violates the First Amendment.³⁷

Under the First Amendment, “the government may not compel a person to speak its own preferred message” or “force an individual to include other ideas with his own speech that he

³⁴ *Id.* at 1125.

³⁵ See *Counterman v. Colo.*, 600 U.S. 66, 69 (2003) (“True threats of violence are outside the bounds of First Amendment protection and punishable as crimes.”); see also *R.A.V. v. St. Paul*, 505 U.S. 377, 388 (1992).

³⁶ This is particularly true as to “physical harm” where the Title IX Regulation provides a separate example covering threats and intimidation. See Sexual Misconduct and Title IX Sexual Harassment Regulation at Sec. III(B) Definitions, Examples of Sexual Harassment (providing example of “unwelcome conduct” as “[a]ctual or implied sexual threats or intimidation which places an individual in fear of imminent physical or psychological harm or injury”).

³⁷ *Vlaming v. W. Point Sch. Bd.*, 302 Va. 504, 527 (Va. 2023) (“[P]ronouns can and do convey a powerful message implicating a sensitive topic of public concern” and are part of “a passionate political and social debate.” (quoting *Meriwether v. Hartop*, 992 F.3d 492, 508 (6th Cir. 2021)); see also *Meriwether*, 992 F.3d at 510.

would prefer not to include.”³⁸ Thus, UNF forcing students to use “preferred pronouns” at the threat of a sexual harassment charge unquestionably violates the First Amendment. Likewise, where pronouns advance a message on a topic of political and social debate, preventing students from using biologically accurate speech restricts students from voicing a message protected by the First Amendment. Moreover, to the extent that a transgender individual may view a speaker’s refusal to use “preferred pronouns” as offensive, insulting, or derogatory, such comments “are not actionable” because “the speaker has a right to make them.”³⁹ Notably, Eleventh Circuit panels have avoided using “preferred pronouns” in opinions, save when quoting material from the record.⁴⁰ And while a court with the luxury of time and a pen may issue an opinion without using pronouns, it is unreasonable and implausible to expect individuals in everyday conversation to always avoid the use of pronouns. As a result, UNF’s Title IX Regulation has the effect of compelling a student to speak on a political topic by using “preferred pronouns” at the threat of investigation, and the reputational and academic consequences that may flow therefrom.

II. UNF’s standard for judging alleged conduct violates the First Amendment.

The guiding standard employed by UNF for judging alleged conduct under both regulations—“sufficiently severe, persistent, or pervasive so as to deny or limit an individual’s ability to participate in or benefit from the University’s educational programs or activities”—confirms and exacerbates the problems with the aforementioned examples of unwelcome conduct. The disjunctive “or” in the first phrase captures both a one-off comment that is severe and comments that are not severe but occur with frequency or across multiple settings. The threat of a single comment being deemed “severe” by UNF chills student speech for students are unable to determine what will qualify as “severe.” Likewise, by capturing “persistent or pervasive” speech, the standard reaches minor but frequent conduct such as pronoun usage.⁴¹ Thus a female college student may now fear reprisal for frequently expressing views opposing a biological male playing on a women’s sports team or for repeatedly confronting a biological male who uses a women’s restroom. That UNF also focuses on whether speech merely limits participation in or benefit from an educational program or activity exacerbates the chill, for a speaker might expect that her speech against biological men in women’s sports may place some limitation on a transgender individual’s engagement on the sport’s team.

The problems created by the standard adopted by UNF are obvious. Numerous courts, in ruling against the Biden Administration Final Rule, recognized that a sweeping “severe or

³⁸ *303 Creative LLC v. Elenis*, 600 U.S. 570, 586 (2023) (citing *Tinker v. Des Moines Indp. Cmty. Sch. Dist.*, 393 U.S. 503, 505 (1969)); see also *Janus v. AFSCME, Council 31*, 585 U.S. 878, 892 (2018) (“Compelling individuals to mouth support for views they find objectionable violates th[e] cardinal constitutional command [that the freedom of expression includes the right to refrain from speaking], and in most contexts, any such effort would be universally condemned.”).

³⁹ *Beard v. Falkenrath*, 97 F.4th 1109, 1117 (8th Cir. 2024) (relying on First Amendment to reject equal protection claim that government employees were required to use preferred pronouns).

⁴⁰ See, e.g., *Adams v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791 (11th Cir. 2022).

⁴¹ See *Tenn. v. Cardona*, 737 F. Supp. 3d 510, 549 (E.D. Ky. 2024) (“[P]ronoun usage is pervasive given its ubiquity in conversation. So anyone refusing to use preferred pronouns, be it for moral or religious reasons, would necessarily be engaging in pervasive conduct.” (internal quotation marks omitted)).

pervasive” standard that finds a violation based on either a denial or a limitation on educational benefits raises serious First Amendment concerns.⁴² The “sufficiently severe, pervasive, or persistent” standard used by UNF is even more problematic where the disjunctive has a triumvirate of adjectives.

As the examples suggest, UNF’s scheme for defining harassment captures an individual making frequent remarks critical of the appearance of a transgender person or repeatedly using biologically accurate pronouns when identifying a transgender person. Accordingly, UNF’s mere removal of the offending examples would not allay First Amendment concerns. Rather, in addition to removing those examples, UNF must reexamine the standard it applies to hostile environment harassment claims under its Title IX Regulation and its Non-Discrimination Regulation. We suggest UNF look to the “conduct determined by a reasonable person to be so severe, pervasive, *and* objectively offensive that it *effectively denies* a person equal access to the recipient’s education program or activity” standard from the 2020 Final Rule as a starting point.⁴³

Conclusion

Revisions to UNF’s current Title IX Regulation and its Non-Discrimination Regulation are necessary so students can freely exercise their First Amendment rights to the fullest extent. As UNF engages in this process, SLF recognizes that First Amendment jurisprudence is certainly complex. SLF’s attorneys stand ready to assist UNF as it navigates these laws. Please do not hesitate to contact us for further guidance.

Sincerely,



Kimberly S. Hermann
President
Southeastern Legal Foundation

cc: Florida Attorney General James Uthmeier
Florida Commissioner of Education Anastasios Kamoutsas

⁴² See *Ala. v. Sec. of Educ.*, No. 24-12444, 2024 U.S. App. LEXIS 21358, at *15–17 (11th Cir. Aug. 22, 2024) (citing *Cartwright*, 32 F.4th at 113–15, 1125–27); see also *Ark. v. Dep’t of Educ.*, 742 F. Supp. 3d 919, 945 (E.D. Mo. 2024); *Kan.*, 739 F. Supp. 3d at 927–28; *La. v. Dep’t of Educ.*, 737 F. Supp. 3d 377, 400–01 (W.D. La. 2024); *Tenn. v. Cardona*, 737 F. Supp. 3d 510, 549–51 (E.D. Ky. 2024).

⁴³ 85 Fed. Reg. at 30574.