PALESTINE LEGAL

PARTNERSHIP FOR CIVIL JUSTICE FUND

Eréndira Rubin
Chief Campus Counsel
UC Santa Cruz,
1156 High Street,
Santa Cruz, CA 95064

Via email to ererubin@ucsc.edu

June 10, 2024

Dear Ms. Rubin:

We are writing on behalf of civil rights legal organizations that are providing support to students, staff, and faculty at UC Santa Cruz who have been unfairly treated—and in some cases, beaten, banned from campus, and now facing disciplinary action—because of their activism in support of Palestinian lives. We are writing to draw your attention to the violations of your students' and workers' civil and constitutional rights in the hope that an internal intervention on your part will avoid the need for legal action on ours.

Our understanding of the facts is as follows: After weeks of peaceful protest on campus, 112 UCSC students, three faculty, one staff member, and eight community members were arrested in violent raid by police in riot gear on May 31, 2024. Many, if not all, arrestees were banned from campus for 7 or 14 days under Penal Code Sec. 626.4. The university's lack of clear communication regarding the campus bans created great anxiety and confusion. Specifically, due to the boilerplate nature of the ban notifications, many students received no clear communication about the length of their bans. The length of the bans seemed arbitrary—some students received 7-day bans, some 14, and at least one received no notice of a ban either verbally or in writing until they received the later notice from the conduct office about their opportunity to appeal the ban. Some students did not find out until their conduct hearing whether their bans were 7 days or 14 days. On June 4, at least 70 students received identical notices from the university with a generic description of the arrests and eight provisions from the Code of Student Conduct that they were alleged to have violated. Students, some of whom not only study but also live and work on campus, were informed that if they wanted to appeal the campus ban and/or respond to the student conduct charges against them, they would have to do so by signing up for a 30-minute time slot using a non-university platform that required them to disclose their personally identifiable information to a third party in violation of the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g; 34 CFR Part 99. This website, SignUpGenius, only contained time slots for Wednesday-Friday, June 5-7. As of noon on Friday, June 7, the site still contained no time slots for future dates, but a promise to create only the number of time slots necessary to process remaining students, blaming students for "many times available Wednesday that went unused."

Many students reached out to the university to request that they be allowed to address the ongoing harm of the campus ban in a timely manner and to be given additional time to prepare to

address the underlying student conduct charges, which are entangled with potential criminal charges, separately. They received mixed messages on this matter, resulting in at least one student who went into their meeting completely unprepared. The university also took an inconsistent approach to the contractual rights of unionized workers, allowing some union representatives to speak during meetings while illegally limiting the role of others.

In an email to students the night of Wednesday, June 5, the university told students that if they chose not to respond to student conduct charges in this joint meeting, "a student conduct decision will be made without your input" and that "Students who fail to participate in an Incident Review Meeting waive their right to a formal hearing," potentially subjecting students to sanctions as serious as suspension or expulsion without any opportunity to defend themselves unless they were willing to do so with almost no time for preparation.

The outcomes of these meetings seem arbitrary and inconsistent, with some students having bans lifted while others who engaged with the process earlier receiving no response. In at least one meeting, a student was told that the office needs to hold hearings for all students before they can make a decision about a particular student's conduct case, an approach that contradicts the university's policy to reach a prompt resolution.

Despite the university's claims to the contrary in the Wednesday email, these are serious violations of students' due process rights.

626.4

Campus bans under 626.4 can only be issued prior to a hearing if a "campus administrator reasonably finds that the situation is such an exigent one that the continued presence on the campus of the person from whom consent to remain is withdrawn constitutes a substantial and material threat of significant injury to persons or property." *Braxton v. Mun. Court for S.F. Judicial Dist.*, 10 Cal.3d 138, 145 (1973). This standard was plainly not met with the blanket bans that were issued to dozens of people without any individualized analysis of any threat they pose. Under the law, once the university no longer has reason to believe that an individual constitutes a "substantial and material threat to the orderly operation of the campus or facility," consent must be restored. Sec. 626.4(c). We urge you to notify everyone who has received one of these blanket notices, regardless of whether they have had a meeting appealing the notice, that their right to be on campus has been restored.

Student conduct charges

Similarly, the blanket issuance of conduct charges against students failed to provide students the individualized allegations they needed to prepare to respond to the specific violations they are accused of. This violation of their due process rights is further exacerbated by the short time they had to prepare for these meetings, the university's linking of the Incident Review Meeting with the 626.4 appeal hearing, and its assertion that any student who declines to combine these meetings waives their right to a formal hearing. The Supreme Court has recognized that "a student's interest in pursuing an education is included within the Fourteenth Amendment's protection of liberty and property" and that "a student facing expulsion or suspension from a

public educational institution is entitled to the protections of due process." *Goss v. Lopez*, 419 U.S. 565, 574–76 (1975). At minimum, due process requires notice of the charges and an opportunity to respond. "The purpose of notice under the Due Process Clause is to apprise the affected individual of, and permit adequate preparation for, an impending 'hearing.'" *Memphis Light, Gas & Water Division v. Craft*, 436 U.S. 1, 14 (1978). Here, students were given only a blanket statement about the actions of 200 people, which may or may not include them. They were not given any individualized evidence or accusation informing them of what, specifically they are alleged to have done wrong. They also had insufficient time to prepare. They had the limited opportunity to schedule their meetings in a window that ranged from less than a day after the notice was issued to two days after the notice. This time is insufficient. See *Waln ex rel. Waln v. Todd County Sch. Dist.*, 388 F. Supp. 2d 994, 1007 (D.S.D. 2005) (one day's notice not sufficient); *Goldberg v. Kelly*, 397 U.S. 254, 268 (1970) (fairness in some cases may require more than seven days' notice of the termination of welfare benefits).

This is particularly true under the circumstances of the present case. These students, who also have pending criminal charges, needed time to connect with counsel to understand the risks and benefits of engaging with the student conduct process while these charges are pending. Students without access to counsel could find themselves unintentionally forfeiting their constitutional right against self-incrimination. While UC policy recognizes a parallel right against self-incrimination in the student conduct process—"no inference shall be drawn from the silence of the accused" PACAOS 103.11(b)—UC Santa Cruz's campus-specific policy seems to attempt an end-run around this right, stating that a hearing board "may draw adverse inferences when a student selectively participates in the process, such as choosing to answer some but not all questions posed." Policy on Student Conduct and Community Agreements 108.30(b).
The inadequacy of the process provided here is especially apparent when contrasted with the university's approach to a nearly identical protest in February 2020. In that case, students similarly faced a ban from campus (in that case in the form of interim suspension) immediately after the February 12 protest, but had until March 13 to schedule their initial meeting. There is no justification for the different approach taken here.

We urge you to remedy these constitutional deficiencies. Given that many students have already been compelled by the university's actions to forgo their rights and either attend these joint meetings or waive their right to defend themselves in the student conduct process, the only remedy available may be dropping the conduct charges entirely. Thank you for your time and attention to this important matter.

Sincerely,

Zoha Khalili, she/her
Senior Staff Attorney
Palestine Legal

Rachel Lederman, she/her
Senior Counsel
Partnership for Civil Justice Fund and its project
The Center for Protest Law & Litigation