



May 13, 2010

**Via Facsimile & U.S. Mail**

Robert A. Corrigan, President  
San Francisco State University  
1600 Holloway Avenue  
San Francisco, CA 94132

Re: Public Records Act Request Regarding Student Discipline for Civil Disobedience

Dear President Corrigan:

It has come to the attention of the ACLU of Northern California that San Francisco State University (“SFSU”) has functionally expelled Halston Chapman for participating in a 24 hour occupation of a campus building as part of a protest against cuts to public education in California. Putting aside whether the disciplinary process afforded Mr. Halston met constitutional requirements of due process, it appears that expulsion is a disproportionately harsh punishment for his offense.<sup>1</sup> In the interest of ensuring that SFSU is not imposing greater sanction for civil disobedience than it would for similar misconduct unmotivated by political activism, we submit this request for records under the California Public Records Act.<sup>2</sup>

**I. Background.**

At about 4:00 a.m. on December 9, 2009, a group of about 15 students entered the College of Business Building and barricaded the doors. They occupied the building for approximately 24 hours, during which time classes were diverted to another building and SFSU deployed the California State Police Critical Response Unit. However, SFSU personnel did not first communicate with the students through an amplified sound device or by telephone to request that the students vacate the building or to learn what their demands might be. It is our understanding that there were affiliated students outside the building who sought to establish a dialogue with SFSU administrators but were unsuccessful. It is also our understanding that the students inside the building intended to comply with any order to vacate the building but that none was received. Around 3:30 a.m. on December 10, a large group of officers broke a window to gain access to the building. The protestors were led out of the building and eleven of them were arrested.

<sup>1</sup> Although we have not reviewed all aspects of the disciplinary process, it appears that it was deficient in at least one aspect. Because he faced, and received, the most serious disciplinary penalty possible, Mr. Halston should have been afforded a right to counsel in his hearing. *Gomes v. University of Maine System*, 365 F.Supp.2d 6, 15 (D. Me. 2005) (student must be permitted the assistance of a lawyer in major disciplinary proceedings).

<sup>2</sup> Gov’t. Code § 6250 *et seq.*; *see* Cal. Const. Art. I § 3(b).

NANCY PEMBERTON, CHAIRPERSON | M. QUINN DELANEY, LINDA LYE, PHILIP MONRAD, VICE CHAIRPERSONS | DICK GROSBOLL, SECRETARY/TREASURER  
ABDI SOLTANI, EXECUTIVE DIRECTOR | CHERI BRYANT, DEVELOPMENT DIRECTOR | LAURA SAPONARA, COMMUNICATIONS DIRECTOR | ALAN SCHLOSSER, LEGAL DIRECTOR  
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STEPHEN V. BOMSE, GENERAL COUNSEL



SFSU instituted disciplinary proceedings against eleven students. Based on a representation from an SFSU administrator that an informal resolution including a restitution payment of about \$50 was available, all but one of these students waived their rights to a disciplinary hearing. The remaining student, Halston Chapman, asserted his right to a hearing and was provided a disciplinary hearing on April 8, 2010. The hearing officer recommended, and you agreed, to place Mr. Chapman on a disciplinary suspension for two semesters, Fall 2010 and Spring 2011. Although you have characterized this action as a "suspension," your letter to Mr. Halston also states that he must reapply for admission for the Fall 2011 semester. Assuming readmission is not guaranteed, the disciplinary action is more accurately characterized as an expulsion.

By way of comparison, we are aware that about 30 student protestors at U.C. Santa Cruz who barricaded and occupied a building for three days were given warnings and restitution penalties. The only U.C. Santa Cruz students who were threatened with probation, suspension or expulsion were those who had previously been disciplined for misconduct. Mr. Chapman does not have a history of discipline for misconduct at SFSU. As a matter of constitutional due process and free speech protections, a public university cannot impose a disproportionately severe penalty for student misconduct because the misconduct was for the purpose of engaging in politically-motivated civil disobedience. See *Thompson v. Sacramento City Unified Sch. Dist.*, 107 Cal.App.4th 1352, 1364 (2003) (administrator must determine that penalty is warranted by the conduct); *R.A.V. v. City of St. Paul*, 505 U.S. 377, 385 (1992) ("nonverbal expressive activity can be banned because of the action it entails, but not because of the ideas it expresses-so that burning a flag in violation of an ordinance against outdoor fires could be punishable, whereas burning a flag in violation of an ordinance against dishonoring the flag is not").

## II. Request for Records.

We request the following records which we believe to be in the possession of SFSU. We understand that some of the records requested involve current and past individual SFSU students, and we ask that you redact any information that would identify such students in order to protect their privacy. In the event there are multiple records that refer to the same student or students, please assign alphanumeric codes to replace particular names to make the redacted records understandable.

1. Records related or referring to SFSU's policies, practices, guidelines, or criteria for determining appropriate levels of discipline for student misconduct, specifically including but not limited to criteria or guidelines for imposing expulsion or suspension and for misconduct related to acts of civil disobedience and training materials for persons responsible for considering disciplinary cases and recommending sanctions for student misconduct.
2. Records related or referring to policies, practices, procedures, or guidelines for SFSU faculty, staff, administrators, participants in the disciplinary process, or police with respect to students, other members of the SFSU community, and/or public at large engaging in political protest or other expressive activities on campus.

3. Records related or referring to disciplinary proceedings or resolutions that resulted in suspension or expulsion in the last five years, including but not limited to proposed resolutions, statements of charges, written recommendations by hearing panels or officers, and final dispositions.
4. Records related or referring to incidents of student misconduct resulting in damage to and/or improper use of SFSU property in the last five years, including but not limited to disciplinary records (such as proposed resolutions, statements of charges, written recommendations by hearing panels or officers, and final dispositions) and records of student misconduct involving SFSU property that did not lead to disciplinary action.

Please respond to this request within ten days, either by providing all the requested information or by providing a written response setting forth the legal authority on which you rely in failing to disclose each document.<sup>3</sup> This request applies to all documents in the possession of SFSU, including emails, video and audiotapes, and other electronic records. It also includes documents that were created by a member of another government agency or a member of the public.<sup>4</sup> If specific portions of any documents are exempt from disclosure, please provide the non-exempt portions.<sup>5</sup>

Because the ACLU is a nonprofit civil rights organization, we request that you waive any fees that would be normally applicable to a Public Records Act request.<sup>6</sup> However, should you be unable to do so, the ACLU will reimburse your agency for the "direct costs" of copying these records (if you elect to charge for copying) plus postage. If you anticipate that these costs will exceed \$50, please contact me before making any copies. Otherwise, please copy and send them as soon as possible, and we will promptly pay the required costs.

If I can provide any clarification that will help identify responsive documents or focus this request,<sup>7</sup> please contact me at (415) 621-2493 or [jmass@aclunc.org](mailto:jmass@aclunc.org). Thank you for your time and attention to this matter.

Sincerely,



Julia Harumi Mass  
Staff Attorney

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<sup>3</sup> Gov't. Code § 6255.

<sup>4</sup> See *Poway Unified School Dist. v. Superior Court*, 62 Cal.App.4th 1496 (1998).

<sup>5</sup> Gov't. Code § 6253 (a).

<sup>6</sup> See *North County Parents Organization v. Department of Education*, 23 Cal.App.4th 144 (1994).

<sup>7</sup> Gov't. Code § 6253.1.