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February 4, 2014

FIRE
Foundation for Individual Rights in Education
601 Walnut Street, Suite 510
Philadelphia, PA 19106

Re: FIRE's January 15, 2014 Letter Regarding Freedom of Expression at UAF

Mr. Creeley,

Thank you for your recent letter regarding a recent UAF Title IX discrimination investigation. UAF applauds your ongoing commitment to protecting the freedom of expression and freedom of the press on college campuses. As you noted in your letter, we in Alaska also have a longstanding commitment to defending free speech rights on our campuses.

As you are likely aware, college campuses—including UAF—are highly regulated environments where competing interests collide. Your letter focused on one such collision, where UAF received a good faith complaint of harassment against its student newspaper, the *Sun Star*.

As your letter notes, and deserves further emphasis, UAF's Office of Diversity and Equal Opportunity (UAF DE&O) refused to act on that complaint against the *Sun Star* because of the very First Amendment issues raised in your letter. However, the complainant then made a second complaint under Title IX against both DE&O for failing to investigate the first report and against the *Sun Star* for a second article. Because the Title IX complaint presented a prima facie case under that law, UAF commenced an investigation.¹

As you note in your letter, UAF's Title IX investigation report, written by Jennifer McConnel, found that neither the *Sun Star's* articles nor UAF DE & O's refusal to investigate the initial complaint amounted to harassment. That legally mandated Title IX investigation was the one and only "investigation" into this matter.

UAF's governing Board of Regents' Policy and University Regulation grant complainants a right to have an investigation reviewed if they disagree with its findings. 04.02.020.E.7. The complainant exercised that right here. As a result, Mr. Perry Grover performed a document review of the initial report and gave each of the original parties an opportunity to provide him with further comments. That was the extent of Mr. Grover's review, and at no time was the *Sun*

¹ See United States Department of Education, Office of Civil Rights, April 4, 2011 Dear Colleague Letter, available at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>.

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Star "investigated" by him. He came to the same conclusion as McConnell's Title IX investigation, submitting his report on January 25, 2014. Specifically, Mr. Grover found that:

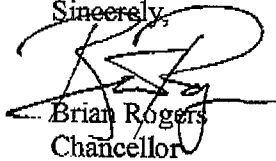
The bottom line is that Title IX allows a range of expression and conduct that some people will find offensive, but is nevertheless considered healthy for society, particularly in a public University and equally so where freedom of the press is involved. In my opinion, the two *Sun-Star* articles fall well within that range, which is what the Investigation Report concluded. Additionally, UAF's DE&O employees correctly understood and applied applicable law to this case.

After reviewing Mr. Grover's report, I adopted his findings on January 29, 2014 and forwarded his decision to the complainant and respondents that day.

Board of Regents' Policy and University Regulation allows for a discretionary review by the University of Alaska President. 04.02.020.E.8. At this time, UAF does not know whether either the complainant or respondent will seek discretionary review.

UAF is committed to both the letter and the spirit of the First Amendment, and the free exchange of ideas is essential to our work as a university. UAF is simultaneously committed to ensuring that Title IX is administered on our campus in accordance with federal law. Those commitments are sometimes at odds, and I appreciate your insight and ongoing work on this issue.

Sincerely,



Brian Rogers
Chancellor

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