



April 14, 2015

Maria L. Alvarez  
Associate Vice President and Dean of Students  
Barry University  
11300 Northeast Second Avenue  
Miami Shores, Florida 33161

Sent via U.S. Mail and Electronic Mail (malvarez@Barry.edu)

Dear Dean Alvarez:

The Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, academic freedom, due process, freedom of speech, and freedom of conscience on America's college campuses. Our website, [thefire.org](http://thefire.org), will give you a greater sense of our identity and activities.

FIRE is concerned by the threat to due process and freedom of expression presented by Barry University's suspension of student Laura [REDACTED] in violation of its own policies and procedures, following the publication of a video documenting [REDACTED] discussions with Barry administrators about the formation of a hypothetical student organization. By swiftly and harshly punishing expressive activity simply because it proves unflattering or embarrassing to the institution, without the process promised by university policy, Barry's actions against [REDACTED] deeply chill student expression and activity.

The following is our understanding of the facts. Please inform us if you believe we are in error.

On March 30, Project Veritas, an organization whose stated mission is to "[i]nvestigate and expose corruption, dishonesty . . . and other misconduct in both public and private institutions," published a video compiled from [REDACTED] recorded discussions with a number of Barry officials concerning the formation of a student organization ostensibly aimed at supporting the Islamic State ("ISIS"), a non-governmental extremist organization occupying territory in a number of Middle Eastern and African countries. The discussions recorded in the video occurred roughly one-and-a-half to two weeks prior to the video's release. In the video [REDACTED] and the various Barry officials are recorded discussing certain

aspects of the potential group's formation and activities, including the organization's goal of providing humanitarian support to ISIS and its affected regions, and the selection of a name for the organization that would avoid any negative connotations associated with ISIS. On April 6, you notified [REDACTED] of her suspension from the university via email, informing her:

In response to complaints filed by members of the University community on Wednesday, April 3, and received by my office this morning, April 6, 2015, **your alleged actions were the cause root of disruption of the University community and the creation of a hostile environment for members of the University staff.** Because these alleged actions violate Barry University's Code of Conduct, effective immediately you are placed on Interim Suspension from Barry University.

[Emphasis added.]

Later on April 6, [REDACTED] was provided with a full list of Barry's conduct charges against her. The charges include:

- Falsification – knowingly furnishing or possessing false, falsified or forged materials, documents, accounts, records, identification or financial instruments;
- Collusion – Action or inaction with another or others to violate the Student Code of Conduct
- Disruptive Behavior - Substantial disruption of University operations including obstruction of teaching, research, administration, other University activities, and/or other authorized non-University activities which occur on campus;
- Violations of Law – Evidence of violation of local, state or federal laws, when substantiated through the University's conduct process.
- Hostile Environment - Sanctions can and will be imposed for the creation of a hostile environment only when [unwelcome] harassment is sufficiently severe, pervasive (or persistent) and objectively offensive that it unreasonably interferes with, limits or denies the ability to participate in or benefit from the University/College's educational or employment program or activities.
- Threatening Behaviors: [. . .] Intimidation - Intimidation defined as implied threats or acts that cause a reasonable fear of harm in another.

Under the terms of her interim suspension and under threat of additional conduct charges, [REDACTED] is prohibited from setting foot on the Barry campus or attending classes.

On April 7, [REDACTED] attended a disciplinary hearing, accompanied by an attorney, but has not yet been informed of the hearing's outcome or of any sanctions imposed. One of the

Barry administrators recorded by ██████ has additionally filed a criminal complaint alleging that the recordings made by ██████ and published in Project Veritas's video violated Florida law.

Barry's charges against Laura ██████ raise substantial due process concerns. Preliminarily, it appears that Barry is inappropriately attempting to hold ██████ accountable for the larger reaction to Project Veritas's video. But the only act ██████ is alleged to have herself committed is recording her interaction with various Barry University staff members. The simple act of recording a video could not and apparently did not cause a disruption, create a hostile environment, or threaten anyone with harm, as proven by the fact that no charges were brought against ██████ until several days after Project Veritas published its video. Fundamental fairness requires that Barry impose sanctions on its students only for acts that they have themselves committed.

Even assuming that Barry could properly hold ██████ responsible for Project Veritas's video, the charges against her fail to satisfy the plain language of Barry's student conduct policies. For these reasons, the charges against ██████ run contrary to basic principles of due process and must be promptly rescinded.

We now address the deficiencies of Barry's case against ██████ in turn.

First, the charge of "Disruptive Behavior" does not withstand scrutiny. While the video posted to Project Veritas's website may have caused consternation at Barry and exposed the university and certain of its administrators to external criticism, it stretches credulity past the point of plausibility to claim that the video's recording, posting and subsequent publicity created a "[s]ubstantial disruption" that in any meaningful way prevented Barry from carrying out its academic or administrative functions. The fact that ██████ apparently attended classes at Barry for a full week following the publication of the video strongly suggests that the video only became "[d]isruptive" once third-party individuals and organizations took notice of it and Barry came in for public criticism for its perceived actions. As should be obvious, ██████ had no meaningful control over the reactions of others to her video. Effectively holding ██████ directly responsible for the attention given by others to Project Veritas's video is a dangerous misapplication of Barry's student conduct policies.

The charge that ██████ created a "Hostile Environment" at Barry fails in a similar fashion. We note first Barry's own definition of hostile environment harassment: behavior "sufficiently severe, pervasive (or persistent) and objectively offensive that it unreasonably interferes with, limits or denies the ability to participate in or benefit from the University/College's educational or employment program or activities." This definition is similar to the exacting standard for student-on-student (or peer) harassment in the educational setting set forth by the Supreme Court, which defined peer harassment as conduct that is "so severe, pervasive, and objectively offensive that it effectively bars the victim's access to an educational opportunity or benefit." *Davis v. Monroe County Board of Education*, 526 U.S. 629, 633 (1999). While Project Veritas's video and its subsequent

publicity may have been unpopular with many at Barry, ██████ part in this matter simply does not meet this high bar, and cannot reasonably be said to have seriously interfered with the ability of members of the Barry community to carry out their other duties or otherwise participate in the life of the college. Again, this charge against ██████ appears predicated on others' reaction and publicizing of the recording, not ██████ own speech and conduct.

The charge of "Intimidation" against ██████ defined in Barry policy as "implied threats or acts that cause a reasonable fear of harm in another," is entirely without merit. Barry has presented no evidence to suggest that ██████ made any threats against anyone in the Barry administration, and no such statements are made in the video that would support this charge. If *other* individuals have made any kind of threats following the video's release, ██████ bears no responsibility for their comments. Unless Barry has evidence of any such threats from ██████ putting Barry community members in legitimate fear of physical harm, this charge must be immediately dismissed.

Given the lack of evidence that ██████ presents any kind of imminent threat to campus safety, or that her presence is so disruptive to campus operations as to merit her removal, the propriety of her interim suspension sanction—which has prevented her from attending classes this past week—is deeply suspect. Indeed, such a sanction in this case appears to violate Barry's guidelines concerning the use of such severe preemptive measures:

Under the Code of Student Conduct, the Dean of Students or designee may impose restrictions and/or separate a student from the community pending the scheduling of a campus hearing on alleged violation(s) of the Code of Student Conduct when a student represents a threat of serious harm to others, is facing allegations of serious criminal activity, to preserve the integrity of an investigation, to preserve University property and/or to prevent disruption of, or interference with, the normal operations of the University.

As evident from the policy, such drastic interim measures against a student are meant to be taken only in extraordinary circumstances—primarily when there is immediate concern for the physical safety of members of the Barry community. Nothing suggests that ██████ presents any such danger or threat of criminal activity. Absent any evidence to the contrary, Barry must promptly lift ██████ interim suspension.

FIRE has serious concerns about the "Violation of Law" charge against ██████ and, more generally, about the appropriateness of universities adjudicating potential violation of criminal statutes. FIRE presumes that this charge is based on FLA. STAT. § 934.03, prohibiting the interception and disclosure of oral communications—the same statute underlying the criminal complaint filed against ██████ Whether particular communications fall under the ambit of this statute depends on whether they are made by a party "exhibiting an expectation of privacy *under such circumstances reasonably justifying such an exception.*" *State v. Inciarrano*, 473 So. 2d 1272, 1275 (Fla. 1985) (emphasis in original). This inquiry is "intensely fact-specific," *Migut v. Flynn*, 131 F. App'x 262, 267 (11th

Cir. 2005), and Florida courts have expressed doubts that a reasonable expectation of privacy inures in one's place of business. *See Cohen Brothers, LLC v. ME Corp., S.A.*, 872 So. 2d 231 (Fla. 3d 2004) (holding that society would not recognize a reasonable expectation of privacy in the context of a conference call held to conduct the business of a company).

As should be obvious, Barry University lacks the requisite procedures, resources, and expertise to undertake this analysis, which is properly the purview of a court of law. It is fundamentally unfair to force a student to choose between mounting a thorough and complete defense to campus disciplinary charges or remaining silent for fear that any statements made in so doing could be used in a future criminal prosecution. Students who are convicted of violating the law may reasonably be punished under the conduct code. But it is unconscionable for the university to assert jurisdiction over criminal matters and place the accused student in such a manifestly unfair and untenable position.

FIRE has additional concerns about the remaining charges of "Falsification" and "Collusion." As to the falsification charge, while it may be true that [REDACTED] did not intend to actually organize any group supporting ISIS, it also seems true that she did not "furnish[] or possess[] false, falsified or forged materials, documents, accounts, records, identification or financial instruments." The prohibition against "Falsification" appears to contemplate the use of tangible fraudulent materials to obtain an improper benefit—something which [REDACTED] plainly did not do. With respect to "Collusion," given the unstable foundations and mistaken argumentation girding the additional charges against [REDACTED] there is question as to just what grounds remain for a charge that she took "[a]ction or inaction with another or others to violate the Student Code of Conduct." We remind Barry that the interests of fairness and due process demand consistency with past practices in adjudicating the charges against [REDACTED] and militate against enhancing sanctions against students based in any part on the attention or embarrassment their cases may attract.

FIRE hopes to see Laura [REDACTED] case brought to a prompt and just resolution. We call on Barry University to dispense appropriately with the wrongful charges against her. Further, we call on the university to immediately rescind [REDACTED] unnecessary and unjust interim suspension pending the resolution of her case.

We request a response to this letter by April 24, 2015.

Sincerely,



Peter Bonilla

Director, Individual Rights Defense Program

cc:

Sister Linda Bevilacqua, OP, PhD, President

Scott F. Smith, Vice President for Student Affairs