



May 7, 2019

Jere W. Morehead
Office of the President
University of Georgia
Administration Building
220 South Jackson Street
Athens, Georgia 30602-1661

Sent via Electronic Mail (president@uga.edu)

Dear President Morehead:

Yesterday, a formal hearing panel convened by the University of Georgia cleared graduate student Irami Osei-Frimpong of charges levied against him concerning his application to UGA. As our previous correspondence observed, these charges were a direct outgrowth of the investigation publicly announced by UGA in the wake of public criticism of Osei-Frimpong's commentary on race, raising a strong inference that the charges were retaliatory in nature.

The resolution of the charges in Osei-Frimpong's favor is a welcome development, and we appreciate both that the hearing panel's members reached a reasoned conclusion and that the university's student conduct administrators were amenable to reaching an informal resolution. However, the course and context of the university's publicly-announced investigation into speech it previously, correctly concluded to be protected expression, will have an impermissible chilling effect on student and faculty expression. Accordingly, the resolution of formal charges does not relieve the University of Georgia's obligations under the First Amendment.

As the January 25, 2019, letter from FIRE¹ explained at length, Osei-Frimpong's comments in a meeting of the Young Democrats and on his personal social media accounts were protected by the First Amendment, which forbade UGA — a government actor — from disciplining Osei-Frimpong as an employee or as a student. While UGA initially affirmed these obligations, it buckled under mounting public pressure and publicly announced that it was “vigorously

¹ As you will recall from prior correspondence, the Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

exploring all available legal options” in conjunction with Georgia’s Office of the Attorney General.

In mounting that investigation, UGA sent the message – to Osei-Frimpong, to its students, to its faculty, and to the general public – that protected speech which garners enough public anger will trigger formal processes and the possibility of discipline. The chilling effect cast by a lengthy investigative process is impermissible even if it does not culminate in the initiation of formal disciplinary charges. *See, e.g., White v. Lee*, 227 F.3d 1214, 1228 (9th Cir. 2000) (government investigation into clearly protected expression chilled speech in violation of the First Amendment); *Levin v. Harleston*, 966 F.2d 85, 89 (2d Cir. 1992) (initiation of investigation into professor’s “offensive” writings on race went “beyond simple vocal condemnation” and implicitly conveyed the possibility of discipline, violating the First Amendment). Even assuming UGA would have pursued the charges concerning Osei-Frimpong’s application in the absence of the controversy surrounding his speech, the timing and context of their pursuit here would lead a reasonable student or faculty member to conclude that engaging in provocative, protected expression will yield formal consequences.

Only UGA may dispel the chilling effect it has caused. As our prior correspondence has repeatedly urged, UGA must publicly and clearly reaffirm that the First Amendment protects Osei-Frimpong’s speech in particular and the speech of other students and faculty in general, and that the university cannot and will not penalize Osei-Frimpong, or any other student or faculty member, for protected expression.

We renew our call on the university to do so now.

Sincerely,



Adam Steinbaugh
Director, Individual Rights Defense Program