



April 24, 2020

Acting President Jim Rains
Haskell Indian Nations University
Office of the President
Navarre Hall
155 Indian Ave
Lawrence, Kansas 66046-4800

URGENT

Sent via Electronic Mail (jrains@haskell.edu)

Dear President Rains:

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.

FIRE is concerned about the ongoing threat to student due process rights at Haskell Indian Nations University (HINU) posed by its suspension of HINU student Russell Parker without a hearing. HINU's continued refusal to schedule a hearing for Parker after removing him from university housing contravenes the university's obligation to afford students due process. FIRE urges HINU to provide Parker with a full and fair opportunity to contest the allegations against him immediately.

I. **HINU Suspends Parker Without Providing a Hearing**

The following is our understanding of the pertinent facts, based on public accounts by Parker and HINU officials.¹ We appreciate that you may have additional information to offer and invite you to share it with us. Please find enclosed an executed waiver authorizing you to share

¹ FIRE's understanding of the facts is drawn from HINU's incident report and Parker's description of events. Haskell Indian Nations Univ., *Incident Report* (Apr. 10, 2020), <http://www.theindianleader.com/wp-content/uploads/2020/04/Parkers-Docuemnts-from-HINU.pdf> (containing HINU employees' account of events); Email from Parker to Tonia Salvini, HINU Vice President of University Services (Apr. 11, 2020), <http://www.theindianleader.com/wp-content/uploads/2020/04/Parker%E2%80%99s-Email-to-Salvini.pdf> (containing Parker's account of events).

information with FIRE. However, if the facts here are substantially accurate, HINU must afford Parker due process by scheduling a hearing for him as soon as practicable.

On April 8, 2020, HINU student and golf team member Russell Parker was golfing on the southwest side of Blalock Hall around 30 feet from the building. Parker regularly hits golf balls toward the driving range at this location, where he can practice by himself without disruption.

At approximately 4 p.m., HINU Acting Facilities Foreman Steven LaCour approached Parker in a forklift to inform him that HINU's campus is closed to the public. Parker replied that he was a student and lived in Winona Hall. LaCour questioned whether Parker was a student, stating that he did not see a student parking sticker on Parker's nearby vehicle. Parker assured LaCour that this sticker was on his car and that he was a HINU student.

LaCour then asked Parker to relocate because of nearby construction. Parker told LaCour that he was aware of the construction workers, that he regularly golfs at this location, and that he was not bothering or disrupting anyone. LaCour clarified that he was ordering Parker to relocate, to which Parker replied: "Ok, that's all you had to say initially. I hope you're happy now." Parker collected his golf equipment and walked to his car.

LaCour, still in his forklift, followed Parker to his car. Upon seeing his student parking sticker on his car, LaCour asked to see Parker's student identification. Parker explained that he left it in his dorm room.

LaCour then ordered Parker to move his car, claiming that this parking lot was off-limits to him. Parker asked why he wasn't allowed to park there, explaining that he did not see any signs prohibiting parking and that he has parked there without issue for the last three weeks. LaCour repeated his order, to which Parker responded: "Are you on some kind of power trip?" LaCour drove off while saying, "I'm going to take a picture and have your car ticketed or towed." Parker said, "You're being an asshole." LaCour said, "Did you just call me an asshole?" Parker replied: "No! I said you're being one!" LaCour, noticing that Parker was becoming agitated and had a golf club in his hand, drove off to get a security guard. Once LaCour drove off, Parker resumed golfing on the southwest side of Blalock Hall.

A few minutes later, HINU Lead Security Officer James Yarnall approached Parker to ask about his encounter with LaCour. Parker recounted the events to Yarnall, who asked for Parker's student identification. Parker told him that he left it in his dorm room. Yarnall then informed Parker that he could continue golfing at this location, but that he had to move his car because the lot was closed. Parker packed up his golf equipment and left.

On April 10, HINU Student Rights Specialist Danelle McKinney notified Parker that he would be placed on "Emergency Suspension Level II" due to "an incident report for violence indicating threats to one or more federal employees" on April 8.² The notice stated that this

² Action Notice Letter from Danelle McKinney, HINU Student Rights Administrator, to Parker (Apr. 10, 2020), <http://www.theindianleader.com/wp-content/uploads/2020/04/Parkers-Docuements-from-HINU.pdf>.

suspension came “with a recommendation for PERMANENT LOSS OF HOUSING” with a deadline for Parker to request an appeal for the loss of housing of April 17.³ In an accompanying “Emergency Suspension Notification” sent to Parker, McKinney claimed: “The facts that support your placement on Emergency Suspension, which we believe are creating an immediate danger of risk to the campus community or yourself are: An incident for substance misuse which resulted in threats to federal employees puts the Haskell Community in an immediate danger of risk for health and safety.”⁴ Under the conditions of his suspension, Parker must immediately vacate his “residential hall room, but still can attend classes, eat lunch meal, use the library and be on the Haskell grounds for other school related purposes.”⁵

Parker replied to McKinney the same day, asking that McKinney schedule the appeal of his suspension as soon as possible because the sudden loss of housing would leave him homeless during the COVID-19 pandemic.⁶ On April 11, Parker emailed his version of events to HINU Vice President of University Services Tonia Salvini, asking for her consideration of his situation.⁷

On April 16, Parker formally asked for an appeal and requested a week’s notice since his lack of housing and internet access rendered him unable to promptly respond to any scheduled hearing on short notice.⁸ McKinney confirmed receipt of Parker’s request on April 17, but did not schedule an appeal hearing.⁹

Upon being removed from university housing on April 10, Parker has slept sporadically at his friends’ houses, in his car, and at hotels. He is currently without housing as his efforts to find temporary housing are hindered by the COVID-19 crisis.

Parker has not heard back from HINU about a hearing date.

II. HINU’s Refusal to Provide a Timely Hearing to Parker After Suspending Him Violates His Due Process Rights

By removing Parker from university housing without promptly providing a hearing, HINU failed to provide Parker with due process and betrayed its legal and moral obligation to uphold students’ rights.

A. *HINU is legally and morally obligated to afford students due process.*

As an educational institution subject to the regulations of the United States Department of the

³ *Id.* (capitalization in original).

⁴ Emergency Suspension Notification from McKinney to Parker (Apr. 10, 2020), <http://www.theindianleader.com/wp-content/uploads/2020/04/Parkers-Docuements-from-HINU.pdf>.

⁵ *Id.*

⁶ Email from Parker to McKinney (Apr. 10, 2020) (on file with author).

⁷ Email from Parker to Salvini, *supra* note 1.

⁸ Email from Parker to McKinney (Apr. 16, 2020) (on file with author).

⁹ Email from McKinney to Parker (Apr. 17, 2020) (on file with author).

Interior’s Bureau of Indian Affairs, HINU is required to “[r]espect the constitutional, statutory, civil and human rights of individual students”¹⁰ and to uphold “[t]he right to due process in instances of disciplinary actions.”¹¹

None of the allegations of Parker’s behavior cited by HINU constituted an emergency. But even assuming for the sake of argument that it had, HINU is still bound to respect his right to due process by affording him a prompt hearing. Per federal regulation, when dealing with “an emergency situation that seriously and immediately endangers the health or safety of the student or others,” requiring the university to “temporarily remove the student” from university grounds, HINU “[m]ust afford the student a hearing that follows due process . . . within ten days” of the removal.”¹²

Indeed, HINU appears to hold itself to a stricter standard when dealing with emergency suspensions. As stated in its Student Handbook, “[i]n an emergency situation that seriously and immediately endangers the health and safety of the student or others,” HINU may “temporarily suspend a student, but . . . shall afford the student a hearing which fully comports with due process **as soon as practicable thereafter.**”¹³

Per both federal regulation and university policy, HINU must provide Parker a prompt and fair hearing.¹⁴ It has failed to do so.

B. HINU must provide Parker with a prompt and meaningful chance to contest allegations against him.

At least 14 days have passed since HINU evicted Parker from his campus residence, forcing him to find new housing during a global pandemic in which public health officials have urged individuals to stay in their homes.¹⁵ At least 14 days have passed since Parker expressed his desire to HINU for a hearing as soon as practicable, and at least 8 days have passed since he formally requested a hearing. This is unacceptable. HINU’s failure to provide Parker a prompt hearing moves its restrictions beyond the temporary and limited measures allowed in emergency circumstances, and cannot be justified under HINU policy and applicable law.

The importance of providing a prompt hearing is heightened when circumstances cast doubt on whether the alleged misconduct constitutes an emergency situation. Parker stands accused

¹⁰ 25 C.F.R. § 42.1 (2020).

¹¹ 25 C.F.R. § 42.2 (2020).

¹² 25 C.F.R. § 42.7 (2020).

¹³ Haskell Indian Nations Univ., *Student Handbook* (last updated 2014), https://www.haskell.edu/downloads/student-rights/Haskell%20CSC_Table%20of%20Contents%207-10-14.pdf. (emphasis added).

¹⁴ *See* Goss v. Lopez, 419 U.S. 565, 581-83 (1975) (discussing how due process requires public schools to provide a suspended student with “an opportunity to present his side of the story . . . as soon as practicable.”).

¹⁵ HINU’s punishment of Parker renders him essentially incapable of complying with Kansas Governor Laura Kelly’s “stay-home” executive order. Kansas Executive Order No. 20-24 (Apr. 16, 2020) <https://governor.kansas.gov/wp-content/uploads/2020/04/EO-20-24-Executed.pdf> (extending statewide “stay-home” executive order until May 3, 2020).

of making a threat and presenting an “an immediate danger of risk to the campus community”¹⁶—a determination he has vigorously denied by providing an account of the April 8 incident contradicting the university’s account.¹⁷ These conflicting accounts present the possibility that HINU has punished Parker without a hearing for expression protected under the First Amendment—an untenable result at a university obligated to uphold the constitutional rights of its students.¹⁸

According to LaCour, Parker appeared “agitated” and “irritated,” and engaged in name-calling with a golf club in his hand.¹⁹ Yarnall claimed that Parker “became belligerent and cursed at Steve [LaCour] and called him rude names,” but “did not say much to me.”²⁰ Parker admits to feeling annoyed, but denies saying anything threatening to these individuals. He also denies any menacing behavior related to his handling of his golf clubs, and argues that he was simply complying with LaCour’s order to pack up his golf equipment and leave. Nor does anything in LaCour’s report indicate that Parker took any physical action in response to their argument, only that he was—as he was before the argument—holding a golf club.

Further, if the alleged danger posed by Parker to the HINU community is “immediate,” it is unclear why the terms of Parker’s emergency suspension require his immediate removal from his residential dorm room, yet allow him to “attend classes, eat lunch meals, use the library and be on the Haskell grounds for other school related purposes.”²¹ This disparity strongly indicates that the “emergency” removal from housing is punitive, not an interim measure designed to address a compelling need.

Because the context of a statement is vital to determining whether an individual’s statements constitute a “true threat” and thus do not enjoy First Amendment protection, HINU’s failure to provide Parker with an opportunity to provide this basic information not only violated his right to due process, but likely violated his free speech rights as well.²² The conflicting

¹⁶ Emergency Suspension Notification, *supra* note 4.

¹⁷ Email from Parker to Salvini, *supra* note 1.

¹⁸ *See supra* notes 10–12 and accompanying discussion. Certain well-defined categories of speech are not protected expression under the First Amendment, including a “true threat,” which is a statement through which “the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.” *Virginia v. Black*, 538 U.S. 343, 359 (2003). The context of a statement is essential to determine whether the statement was a “serious threat,” or something else: a joke, hyperbole, sarcasm, or other non-serious expression of an intent to commit violence. *See, e.g., Watts v. United States*, 394 U.S. 705, 707 (1969) (Vietnam War draftee’s statement that “the first man I want to get in my sights is” the president, followed by laughter, was not a threat, but political hyperbole), *Rankin v. McPherson*, 483 U.S. 378, 381–87 (1987) (statement expressing hope that someone might assassinate the president did not amount to a threat).

¹⁹ *Incident Report*, *supra* note 1 (containing LaCour’s account of his interaction with Parker).

²⁰ James Yarnall, *Activity Log and Door Report* (Apr. 8, 2020) (containing Yarnall’s account of his interaction with Parker), <http://www.theindianleader.com/wp-content/uploads/2020/04/Parkers-Docuemnts-from-HINU.pdf>.

²¹ Emergency Suspension Notification, *supra* note 4. None of the reports underlying the Emergency Suspension Notification reference any “substance” use or “misuse” by Parker. *Id.*

²² While impolite, referring to someone as an “asshole” is not reasonably likely to provoke a violent response from a university employee, and remains protected by the First Amendment. *See, e.g., Green v. Barber*, 310 F.3d

accounts of Parker's conduct, as well as HINU's obligation to afford due process, Parker's current perilous living situation, and the distinct possibility that Parker remains punished for protected expression—or, at the very least, conduct posing no imminent threat to the HINU community—necessitates a prompt and full hearing for Parker.

III. **HINU Must Provide a Hearing to Parker Immediately**

HINU's inexcusable delay in scheduling a hearing has already caused great harm to Parker, who eagerly awaits an opportunity to clear his name and resume his education at HINU. This abdication of responsibility to its students must not proceed any further. FIRE calls on HINU to fulfill its obligations by providing Parker with a fair hearing immediately.

Given the urgent nature of this matter, we request receipt of a response to this letter no later than the close of business on Tuesday, April 28, 2020, confirming that HINU has vacated the interim suspension and will afford Parker his right to a fair hearing on the underlying accusations.

Sincerely,



Zachary Greenberg
Program Officer, Individual Rights Defense Program

Cc: Danelle McKinney, Student Rights Administrator
Tonia Salvini, Vice President of University Services

Encl.
FERPA Waiver

889, 896–97 (6th Cir. 2002) (plaintiff's remark, "you're being [an] asshole," was "not egregious enough to trigger application" of the fighting words doctrine).