



November 13, 2020

President Ronald Nowaczyk
Office of the President
Frostburg State University
101 Braddock Road
Frostburg, Maryland 21532-2303

Sent via Electronic Mail (president@frostburg.edu)

Dear President Nowaczyk:

FIRE¹ is concerned by a report that Frostburg State University (FSU) is utilizing periodic reviews of students serving as Resident Assistants as a vehicle to penalize RAs who criticize the university's response to the COVID-19 pandemic.² That report, by *The Bottom Line*, is bolstered by emails sent by Director of Residence Life Kimberly Hinds-Brush, who said that the report was "sort of" true³ and proposed a draft statement defending the practice:

In the real world, if you bad mouth your employer you could lose your job. With the Resident Assistants, who are employed by Frostburg State University, speaking out against their employer may be noted in their evaluation forms and used as a teaching tool.⁴

The Bottom Line reported that FSU did not respond to its inquiries about whether RAs would be penalized for "speaking out about their experiences, particularly with COVID-19." We have the same question and call on FSU to affirm the First Amendment rights of its RAs.

¹ As you may 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.

² Cassie Conklin, *FSU Attempts To Silence Students Who Speak Out About COVID-19, Says Resident Assistants*, THE BOTTOM LINE, Nov. 12, 2020, <http://thebottomlinenews.com/fsu-attempts-to-silence-students-who-speak-out-about-covid-19-says-resident-assistants>.

³ E-mail from Kimberly Hinds-Brush, Dir. of Residence Life, Frostburg State Univ., to Carl Crowe, Dean of Students, Frostburg State Univ. (Nov. 2, 2020, 1:19 PM), *available at* <http://thebottomlinenews.com/wp-content/uploads/2020/11/RA-Eval-request.pdf>.

⁴ E-mail from Hinds-Brush to Liz Medcalf, Dir. of News & Media Services, Frostburg State Univ. (Nov. 2, 2020, 1:55 PM), *available at* <http://thebottomlinenews.com/wp-content/uploads/2020/11/RA-Eval-request.pdf>.

FSU inappropriately conceives of its relationship with its RAs to be one of pure at-will employment, under which an employer may terminate an employee for any or no reason, provided it is not contrary to contract or public policy. In the real world, Frostburg *State* University is a public institution bound by the First Amendment,⁵ and students who take employment roles at the university do not “relinquish First Amendment rights to comment on matters of public interest by virtue of government employment.”⁶

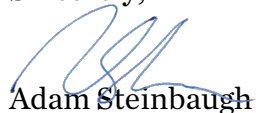
Instead, students employed as RAs retain a right to speak as private citizens on matters of public concern.⁷ The COVID-19 pandemic is not only of critical public concern—that is, any subject which “can be fairly considered as relating to any matter of political, social, or other concern to the community”⁸—but is also important to the students and faculty members who live, learn, and work at FSU. It is also understandably important to the RAs, who are concerned about the safety of a campus that is not only their workplace but also their home. Even if a person speaks about their public employer, their speech may be protected so long as it addresses matters of public concern.⁹ Consequently, RAs have a First Amendment right to publicly raise concerns about FSU’s response to COVID-19.

To be sure, the university may bar disclosure of individual students’ confidential information and restrict RAs from purporting to speak on behalf of FSU. However, retaliating against RAs for “speaking out” against the university is flatly impermissible under the First Amendment.

Accordingly, we call on FSU to immediately clarify that RAs will not be punished for speaking as private citizens on matters of public concern, provided that they do not purport to speak on behalf of FSU nor reveal information made confidential by law.

We request receipt of a response to this letter by November 20, 2020.

Sincerely,



Adam Steinbaugh
Director, Individual Rights Defense Program

Cc: Kimberly Hinds-Brush, Director of Residence Life
Carl Crowe, Dean of Students

Encl.

⁵ *Healy v. James*, 408 U.S. 169, 180 (1972) (“[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, ‘the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.’”) (internal citation omitted).

⁶ *Connick v. Myers*, 461 U.S. 138, 140 (1983).

⁷ *Bradley v. James*, 479 F.3d 536, 538 (8th Cir. 2007).

⁸ *Snyder v. Phelps*, 562 U.S. 453 (2011).

⁹ *Pickering v. Bd. of Educ.*, 391 U.S. 563, 576–78 (1968) (appendix reproducing teacher’s letter to a local newspaper criticizing his employer, explaining that he teaches at the high school).

Bradford Nixon

From: Kimberly Hinds-Brush
Sent: Monday, November 2, 2020 1:55 PM
To: Liz Medcalf
Cc: Carl W Crowe; Bradford Nixon; Artie L Travis; Jeffrey L Graham; Gregg A Sekscienski
Subject: FW: RA Evaluations
Attachments: RA Eval F20.docx

Liz,

I received tis email from Cassie and here is what I would like to respond with. I have also attached the evaluations form we use.

In the real world, if you bad mouth your employer you could lose your job. With the Resident Assistants, who are employed by Frostburg State University, speaking out against their employer may be noted in their evaluation forms and used as a teaching tool.

But I will leave this up to you. We did talk about attitude with the Hall Directors today and how that impacts how RA's are seen by others. And we discussed them coving this topic during their evaluations of the RA's under the attitude part of the eval.

Kim

Kim Hinds-Brush
Director of Residence Life
Frostburg State University
Pullen Hall, 104
301-687-4121

Analytical / Context / Learner / Relator / Strategic / Input

From: Cassie N Conklin
Sent: Monday, November 2, 2020 1:09 PM
To: Kimberly Hinds-Brush <[REDACTED]@frostburg.edu>
Cc: Delanie G Blubaugh <[REDACTED]@frostburg.edu>
Subject: RA Evaluations

Good afternoon, Mrs. Hinds-Brush.

I am reaching out on behalf of *The Bottom Line* to inquire about Resident Assistant evaluations. A student wrote to us saying that "the university is requiring Hall Directors to put in their evaluation if an RA has spoken out against the university." Another student told me that this isn't required by Residence Life, but rather the university itself. They say it's going under the "attitude category." They are concerned this will impact their ability to be rehired in the future.

Are these students right in their assessment? Will RAs be penalized for speaking out about their experiences, particularly with COVID-19? Any help you can provide would be appreciated.

Bradford Nixon

From: Kimberly Hinds-Brush
Sent: Tuesday, November 3, 2020 11:18 AM
To: Bradford Nixon
Subject: FW: RA Evaluations

Kim Hinds-Brush
Director of Residence Life
Frostburg State University
Pullen Hall, 104
301-687-4121

Analytical / Context / Learner / Relator / Strategic / Input

From: Kimberly Hinds-Brush
Sent: Monday, November 2, 2020 1:22 PM
To: Carl W Crowe <[REDACTED]@frostburg.edu>
Subject: Re: RA Evaluations

Sort of, I will come down after this meeting

Sent from my iPhone

On Nov 2, 2020, at 1:19 PM, Carl W Crowe <[REDACTED]@frostburg.edu> wrote:

Is this true?

Carl Crowe
Dean of Students
Certified Title IX Hearing Officer
Frostburg State University
116 Hitchins Administration Building
101 Braddock Road
Frostburg, MD 21532
V - 301-687-4311 | F - 301-687-4937

<image001.png>

This email and any files transmitted with it are confidential and intended solely for the use of the individual(s) to whom it is addressed. If you have received this email in error, please contact the sender. Any other use of this email is strictly prohibited.

From: Kimberly Hinds-Brush <[REDACTED]@frostburg.edu>
Date: Monday, November 2, 2020 at 1:17 PM
To: Carl W Crowe <[REDACTED]@frostburg.edu>
Subject: Fwd: RA Evaluations

Sent from my iPhone

Begin forwarded message:

From: Kimberly Hinds-Brush <[REDACTED]@frostburg.edu>
Date: November 2, 2020 at 1:14:29 PM EST
To: Katie Weir <[REDACTED]@frostburg.edu>, Katie S Buehner <[REDACTED]@frostburg.edu>
Subject: Fwd: RA Evaluations

WTF

Sent from my iPhone

Begin forwarded message:

From: Cassie N Conklin <[REDACTED]@frostburg.edu>
Date: November 2, 2020 at 1:08:40 PM EST
To: Kimberly Hinds-Brush <[REDACTED]@frostburg.edu>
Cc: Delanie G Blubaugh <[REDACTED]@frostburg.edu>
Subject: RA Evaluations

Good afternoon, Mrs. Hinds-Brush.

I am reaching out on behalf of *The Bottom Line* to inquire about Resident Assistant evaluations. A student wrote to us saying that "the university is requiring Hall Directors to put in their evaluation if an RA has spoken out against the university." Another student told me that this isn't required by Residence Life, but rather the university itself. They say it's going under the "attitude category." They are concerned this will impact their ability to be rehired in the future.

Are these students right in their assessment? Will RAs be penalized for speaking out about their experiences, particularly with COVID-19? Any help you can provide would be appreciated.

Best,

Cassie Conklin
Frostburg State University
Department of Geography, Class of 2020