



December 15, 2020

United States Department of Education
Free Speech Hotline
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Sent via Electronic Mail (freespeech@ed.gov)

To Whom It May Concern:

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.

We write to draw the Department's attention to the actions of Louisiana State University (LSU). These actions indicate that LSU has substantially misrepresented its educational program, which purports to protect the freedom of expression of its students and faculty. LSU has acted in a manner inconsistent with its constitutional obligations and representations by:

- Reportedly communicating to Resident Assistants—students who assist the university in managing residential life functions—that they may not speak to journalists.¹
- Establishing a written policy requiring Resident Assistants to inform supervisors whenever they are approached by a member of the media and to refrain from “air[ing their] disagreements with Residential Life” even when they are discussing their personal experiences.

LSU's reported prohibitions inappropriately restrict the First Amendment rights of student employees to speak on matters of public concern,² including the university's response to the COVID-19 pandemic.

¹ Mark Ballard, *Is LSU ready to house 7,000 incoming students on campus? A former RA doesn't think so*, THE ADVOCATE, Aug. 11, 2020, https://www.theadvocate.com/baton_rouge/news/education/article_35606f96-dc23-11ea-b194-4bc31fd3ddec.html.

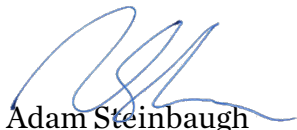
² *Connick v. Myers*, 461 U.S. 138, 140 (1983); *Modica v. Taylor*, 465 F.3d 174, 180 (5th Cir. 2006).

LSU is a public institution bound by the First Amendment. In addition to these constitutional obligations, LSU represents to its students and faculty, to the public, and to the Department that it protects the freedom of expression of its students. Relevant excerpts of these commitments are enclosed.

On August 14, 2020, FIRE wrote to LSU's senior leadership to remind it of its constitutional obligations to its students. Disappointingly, LSU failed to respond.

LSU's refusal to clarify its students' rights and rescind its overbroad policy restricting students' freedom of expression renders its representations a substantial misrepresentation in violation of 20 U.S.C. § 1094(c)(3) and 34 CFR 668.71(c).³ Accordingly, FIRE requests that the Department initiate an investigation to determine whether monetary penalties or other measures are appropriate, pursuant to its authority under 20 U.S.C. § 1094(c)(3) and 34 CFR 668.71(a).

Sincerely,



Adam Steinbaugh
Director, Individual Rights Defense Program

Encl.

- Appendix A: Excerpts of LSU's expressive rights policies
- Appendix B: Correspondence from FIRE to LSU

³ U.S. Dep't of Educ., Final Rule, 85 Fed. Reg. 59,922 n.37 (Sept. 23, 2020) ("The Department notes that public and private institutions also may be held accountable to the Department for any substantial misrepresentation under the Department's borrower defense to repayment regulations.").

Appendix A:
Excerpts of Relevant LSU Policies

I. LSU Permanent Memorandum 79: Freedom of Speech and Expression

LSU’s “Freedom of Speech and Expression” policy, set forth in “Permanent Memorandum 79” and published on the university’s website, provides in pertinent part:⁴

I. GENERAL POLICY STATEMENT

Louisiana State University (“LSU” or the “University”) is fully committed to free speech among students, faculty, staff, and visitors. To fulfill our primary role of discovering and disseminating knowledge, a free interchange of ideas is necessary. LSU prides itself on upholding of free expression and believes that a culture of intense inquiry and informed argument generates lasting ideas. This freedom comes with a responsibility to welcome and promote expression for all people and all ideas, even when in disagreement or opposition. This policy applies to all campus locations of LSU.

LSU unequivocally supports and endorses free speech and free expression among its students, faculty, and staff. The University strives to ensure the fullest degree of intellectual freedom and free expression on campus. It is not the proper role of the University to shield individuals from speech protected by the First Amendment of the Constitution of the United States of America and Article I, Section 7, of the Constitution of Louisiana, and other applicable laws, including without limitation ideas and opinions they find unwelcome, disagreeable, or even deeply offensive. Students and faculty have the freedom to discuss any topic that presents itself, as provided under the First Amendment of the Constitution of the United States of America and Article I, Section 7 of the Constitution of Louisiana and as other applicable laws permit, in a manner which does not materially and substantially disrupt the functioning of the University and within the limits on time, place, and manner of expression stated herein.

[...]

⁴ LA. STATE UNIV., PERMANENT MEMORANDUM 79: FREEDOM OF SPEECH AND EXPRESSION (Nov. 9, 2018), *available at* https://www.lsu.edu/administration/policies/pmfiles/pm_79.pdf.

The freedom to debate and discuss the merits of competing ideas does not mean that individuals may say whatever they wish, wherever they wish. The University prohibits expression that violates the law, defames a specific individual, constitutes a genuine threat, violates the Student Code of Conduct, or unjustifiably invades substantial privacy or confidentiality interests. In addition, the University may reasonably regulate the time, place, and manner of expression to ensure that it does not disrupt the educational activities and mission of the institution

[...]

This policy supersedes and nullifies any provision in the policies and regulations of the University that restricts speech on campus and is therefore inconsistent with this policy on free expression.

II. LSU Department of Residential Life Media Policy

LSU's "Media Policy" for students employed by the Department of Residential Life provides, in pertinent part:⁵

MEDIA RELATIONS

The Department of Residential Life supports the establishment of cooperative relationships with media representatives which include students (Reveille, Tiger Weekly, KLSU, Tiger-TV, Legacy, and Gumbo) as well as full-time news media professionals. You are expected to be professional and courteous to media representatives, and many times that may take the form of referring the media representative to the appropriate spokesperson within the Department.

A. Spokespersons

On occasion, you may be approached by a member of the media. This is more likely if there is an urgent issue in the residence halls such as a crime, fire, or other crisis. You may also be questioned about more routine concerns or stories of general interest. Following are basic expectations in dealing with the media:

⁵ LA. STATE UNIV. DEP'T OF RESIDENTIAL LIFE, MEDIA POLICY (RLOP 05) (rev. June 15, 2015), *available at* <https://www.thefire.org/louisiana-state-university-residential-life-media-policy-june-15-2015>. This policy was provided in response to a public records request. Full copies of that request and the policy are enclosed in Appendix B.

[...]

2. If you decide to speak with a reporter regarding a non-emergency situation, it is important to remember that you are speaking in your role as a staff member of the Department of Residential Life. This places different responsibilities on you than if you were only a student. Be sure to consider the following:

[...]

b. **Your *[sic]* represent LSU.** Even though you may be discussing your own experiences, you will be identified as an LSU staff member, so you are representing the university. This is not an appropriate time to air your disagreements with Residential Life. Any such disagreements should be discussed with the Residential Life staff followed by appropriate avenues of appeal on campus if necessary.

[...]

f. If you speak with a reporter, be sure to let your immediate supervisor know so that he/she can inform the Executive Director.

Appendix B:
Correspondence with LSU

Correspondence with LSU is attached, as follows:

- Aug. 14, 2020 FIRE letter to LSU Assistant Vice President for Residential Life Steve Waller.
- Aug. 17, 2020 FIRE public records request to LSU.
- June 15, 2020 LSU Dep't of Res. Life Media Policy (RLOP: 05), provided in response to FIRE's Aug. 17, 2020 public records request.

Aug. 14, 2020

**FIRE letter to LSU Assistant Vice President for
Residential Life
Steve Waller**



August 14, 2020

Steve Waller
Assistant Vice President for Residential Life
Louisiana State University
107 Grace King Hall
Baton Rouge, Louisiana 70803-0106

URGENT

Sent via Electronic Mail (swaller@lsu.edu)

Dear Mr. Waller:

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 by a report that students serving as Resident Assistants at Louisiana State University have been forbidden from speaking to reporters, including those from LSU's student newspaper, *The Reville*.¹ If this report is accurate, a blanket prohibition against speaking to the media violates students' fundamental First Amendment rights. We invite clarification or, if the report is accurate, demand that any such policy be rescinded.

It has long been settled law that the First Amendment is binding on public universities like LSU.² 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."³ Instead, they retain a right to speak as citizens on matters of public concern.⁴

¹ Mark Ballard, *Is LSU ready to house 7,000 incoming students on campus? A former RA doesn't think so*, THE ADVOCATE, Aug. 11, 2020, https://www.theadvocate.com/baton_rouge/news/education/article_35606f96-dc23-11ea-b194-4bc31fd3ddec.html.

² *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).

³ *Connick v. Myers*, 461 U.S. 138, 140 (1983).

⁴ *Modica v. Taylor*, 465 F.3d 174, 180 (5th Cir. 2006).

A categorical prohibition against speaking to the media trammels that right because it bars RAs from speaking to reporters about any issue. That includes matters of profound 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[.]”⁵

The COVID-19 pandemic is of critical public concern, particularly to arriving students uncertain whether they will complete this semester on campus. It is also understandably important to the RAs, concerned about the safety of a campus that is not only their workplace, but their home. Even if a person speaks about their employer, their speech may be protected so long as it addresses matters of public concern.⁶ Consequently, RAs have a First Amendment right to raise concerns about the university’s response to COVID-19.

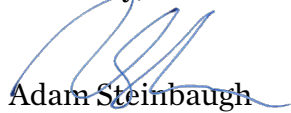
To be sure, the university may bar disclosure of individual students’ confidential information, and restrict RAs from purporting to speak on behalf of the university. However, a blanket prohibition against speaking to the media will not advance the university’s interests. Instead, it will backfire, engendering anxiety among students and parents about the university’s transparency and safety.

Accordingly, we ask that Louisiana State University immediately:

- (1) Share any training materials or documents setting forth any policy or expectations concerning interactions between RAs and the media; and
- (2) Clarify that RAs will not be punished for speaking as private citizens on matters of public concern, provided that they do not reveal information made confidential by law.

We request receipt of a response to this letter by Wednesday, August 19, 2020.

Sincerely,



Adam Steinbaugh
Director, Individual Rights Defense Program

Cc: Winston G. DeCuir, Jr., Vice President of Legal Affairs and General Counsel

⁵ *Snyder v. Phelps*, 562 U.S. 453 (2011).

⁶ *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).

Aug. 17, 2020
FIRE public records request to LSU



Adam Steinbaugh <adam@thefire.org>

PRR Steinbaugh (FIRE) - Social Media/RA

1 message

Johanna Posada <jposada1@lsu.edu>
To: "adam@thefire.org" <adam@thefire.org>

Tue, Aug 18, 2020 at 2:55 PM

Dear Mr. Steinbaugh –

This email is to respond to your Public Records Request made in your email, copied below, pursuant to Louisiana Public Records Law.

The LSU documents responsive to your request are attached hereto.

This communication concludes LSU's response to your Public Records Request. LSU requests that you acknowledge receipt of this email.

Sincerely,



Johanna A. Posada, Esq.

Assistant General Counsel

Office of Legal Affairs & General Counsel

Louisiana State University

124 University Administration Building

3810 West Lakeshore Dr.

Baton Rouge, Louisiana 70808

Office: (225) 578-3531

jposada1@lsu.edu | lsu.edu

From: Adam Steinbaugh <adam@thefire.org>
Sent: Monday, August 17, 2020 8:18 AM
To: Deborah C Richards <drichards@lsu.edu>
Subject: Request for Records: RA media policy

To whom it may concern:

This is a request for the following records pursuant to the LA: Louisiana Public Records Act (La. Rev. Stat. § 44:1 *et seq.*).

My name, address, and telephone number are:

Adam Steinbaugh

Foundation for Individual Rights in Education

[510 Walnut Street](#)

Suite 1250

[Philadelphia, PA 19106](#)

(562) 686-6990.

I would prefer receipt of the requested records in email form.

Records Requested:

1. Any policy, guidance (including guidance sent by email), or handbook which concerns the interactions between Residential Assistants and the media, reporters, or journalists. This request is limited to policies, guidance, or handbooks effective on or issued after August 1, 2020.

Fee waiver request: This request is made on behalf of the Foundation for Individual Rights in Education, a nonprofit and nonpartisan organization that works to preserve civil liberties on college campuses. We request a waiver of any fees or costs associated with this request.

This request concerns a matter of public interest, specifically the ability of students at LSU to talk to journalists about the institution's response to the COVID-19 pandemic. The records are not sought for a commercial or personal interest, but rather for the purpose of providing the public with information concerning civil liberties in higher education.

Request for expedited processing: The records pertain to a matter of public importance and current debate. Providing expedited production of the records will facilitate the public understanding of these matters before they are fully resolved. Any undue delay in production will undermine the

purpose of the public records laws, which serve to allow public input and oversight of government affairs.

In any event, Louisiana law requires a response to a request within three days (exclusive of Saturdays, Sundays, and legal public holidays). (La. Rev. Stat. Ann. § 44:32(D)).

Request for Privilege Log: If any otherwise responsive documents are withheld on the basis that they are privileged or fall within a statutory exemption, please provide a privilege log setting forth (1) the subject matter of the document; (2) the person(s) who sent and received the document; (3) the date the document was created or sent; and (4) the basis on which it is the document is withheld.

Please note that this request does not seek a search of faculty or student email accounts or records. These requests should in no way be construed to include a review or search of email accounts, websites, or other forms of data or document retention which are controlled by students, alumni, or faculty members, nor by governmental or advisory bodies controlled by the same. Any search should be limited to documents held by the administration and/or its staff members, including records created or maintained by persons acting in the capacity of administrators or staff members.

If I can be of assistance in interpreting or narrowing this request, please don't hesitate to ask.

Best,

Adam B. Steinbaugh
Director, Individual Rights Defense Program*

Foundation for Individual Rights in Education

510 Walnut Street

Suite 1250

Philadelphia, PA 19106

(215) 717-3473

adam@thefire.org

This communication may contain information that is confidential or privileged. Unless you are the addressee (or authorized to receive this message by the addressee), you may not use, copy, or disclose the contents of this message or information contained in this message to anyone. If you believe that you have received this message in error, please advise the sender and delete this message.

* Admitted in California and Pennsylvania

2 attachments



2021 RA Manual.pdf

672K



RLOP-05-Media-Policy.pdf
246K

June 15, 2020

LSU Dep't of Res. Life Media Policy (RLOP: 05)



MEDIA POLICY

Scope: Residential Life

Issued : June 1, 2012

Revised: June 15, 2015

I. Purpose

The Department of Residential Life benefits from acting in an open environment where policies, procedures, and other information are disseminated to the public in an accurate, timely, and orderly manner. The Department is therefore committed to cooperating with all interested publics, including the media, by providing appropriate information about services, activities, issues, and incidents which occur in campus residential facilities.

II. Policy

To ensure proper and equal access to Residential Life Information, the following guidelines are adopted for contact with the media:

RESTRICTED INFORMATION

A. Information Not For Release

As a staff member, you shall not release: (1) information about students protected under the Buckley Amendment, (2) personnel information about employees, and (3) other information protected by state and federal legislation.

B. Directory Information

Under the Buckley Amendment, you may release “directory information” about a student unless that student has specifically asked that it be withheld. The university has interpreted “directory information” to include: name, class and college, local and permanent addresses, and local telephone number. If the student has filed a request with the Office of the Registrar, a warning message will appear on all computer screens and printed lists, and the directory information shall not be released.

C. Local Phone Numbers

For security reasons, Residential Life staff members may release the local phone number of a current resident only after that student’s full name is supplied by the person requesting information.

D. Information About Crimes

Information about actual, alleged, or possible crimes under investigation in residential facilities shall be released only by the LSU Police Department.

ISSUANCE OF NEWS RELEASES

A. Routine News Releases

The Office of Communications & University Relations prepares and distributes news releases in support of planned divisional or area activities and in response to newsworthy events. The Executive Director or the Associate Director of Communications & Development refers and schedules interviews with contacts other than designated spokespersons within the Department of Residential Life. The Executive Director or Associate Director of Communications & Development will apprise the Office of Communications & University Relations of activities involving off-campus media.

B. Non-Routine/Crisis Statements and News Releases

Non-routine/crisis statements may be prepared by the Executive Director of Residential Life and the Associate Director of Communications & Development in conjunction with the Office of Communications & University Relations. If you are contacted by media representatives for information regarding crisis or emergency situations, you should refer them to the Executive Director or your Director. If you are unable to determine if an event or situation is of a non-routine or crisis nature you should consult with your supervisor or your Director. Staff members in the Office of Communications & University Relations may be contacted at any time you have questions.

MEDIA RELATIONS

The Department of Residential Life supports the establishment of cooperative relationships with media representatives which include students (Reveille, Tiger Weekly, KLSU, Tiger-TV, Legacy, and Gumbo) as well as full-time news media professionals. You are expected to be professional and courteous to media representatives, and many times that may take the form of referring the media representative to the appropriate spokesperson within the Department.

A. Spokespersons

On occasion, you may be approached by a member of the media. This is more likely if there is an urgent issue in the residence halls such as a crime, fire, or other crisis. You may also be questioned about more routine concerns or stories of general interest. Following are basic expectations in dealing with the media:

1. In general, the Executive Director and/or Associate Director of Communications & Development are the official spokespersons for the Department and you should feel comfortable in referring all media inquiries to them. Inquiries related to crisis or emergency situations should always be referred to them. (In their absence you may refer inquiries to the

Director for Residential Life & Education, the Director for Housing, or the Assistant/Associate Directors).

2. If you decide to speak with a reporter regarding a non-emergency situation, it is important to remember that you are speaking in your role as a staff member of the Department of Residential Life. This places different responsibilities on you than if you were only a resident. Be sure to consider the following:
 - a. Never release information you believe to be or have been told is confidential.
 - b. **Your represent LSU.** Even though you may be discussing your own experiences, you will be identified as an LSU staff member, so you are representing the university. This is not an appropriate time to air your disagreements with Residential Life. Any such disagreements should be discussed with the Residential Life staff followed by appropriate avenues of appeal on campus if necessary.
 - c. **Be prepared.** Find out what the interview is about and be prepared to discuss the topic.
 - d. **If you don't know, say so.** It's okay to tell a reporter you don't know the answer to a question. Offer to find out and get back to them, or refer them to the Executive Director of Residential Life or Associate Director of Communications & Development. Don't speculate, make up an answer that could turn out to be incorrect, or say "no comment."
 - e. **Always be professional and polite.** Anything you say or do can be quoted by the reporter, so don't forget that you are always "on the record." You may politely end a conversation with a reporter at any time even though you initially answered questions.
 - f. If you speak with a reporter, be sure to let your immediate supervisor know so that he/she can inform the Executive Director.

B. Media Access

Ideally, media representatives should prearrange access needs with the Executive Director or Associate Director of Communications & Development prior to accessing residence halls or university apartments. If prearrangements have not been made, you should immediately contact the Director, the appropriate Assistant Director, Residence Life Coordinator or Resident Manager who will contact the media representatives to determine if the reporter's needs can be met within the established policies and procedures. The Executive Director or Associate Director of Communications & Development should be notified about media in residence hall areas or apartments and should be contacted for consultation and assistance, if needed.

Residence hall public spaces are considered accessible to the general public, which includes media representatives. These public areas are those areas not behind the first level of security of our communities. For example, media may set up and film outside of residence halls on public property, but may not interfere with the regular operations in these areas or "harass" residents or staff.

Students' living areas, including student rooms, apartments, hallways, stairwells, restrooms, common areas, and floor or section lounges, are not accessible to the general public or the media.

Only residents and their guests are permitted in these areas. Guests must follow the Guest Visitation Policy to be in these areas. You should immediately call the LSU Police Department if others are in student living areas. Anyone breaching security in these areas should be warned for trespassing by the LSU Police Department so an official record of the unauthorized entry is kept.

Media representatives may enter main lobby areas or front desk areas seeking assistance, but may not remain in the areas unescorted. They may only film in these more public areas of the halls with a Residential Life staff escort, or as the registered guest of a resident.

C. Media Credentials

Media credentials serve as identification only. **YOU SHOULD NOT GRANT SPECIAL ACCESS OR INFORMATION PRIVILEGES TO AN INDIVIDUAL BECAUSE OF HIS/HER IDENTIFICATION AS A MEMBER OF THE MEDIA.**

The safety, confidentiality, and privacy needs of the community members come first, and students and staff must not be overwhelmed by media representatives showing credentials or carrying video cameras and microphones. Media should never be allowed access and escort into student living areas

Students who are approached by the media in public spaces have the option of talking with representatives or not talking with them depending on their level of comfort. Contact the Associate Director of Communications & Development or the Office of Communications & University Relations if you have any questions regarding media credentials.

D. Athletes

All policies related to access for the media to residential facilities apply in areas that house athletes. If you receive a request for an interview with an athlete or an inquiry regarding Athletic Department issues and activities, refer that person to the Media Relations and Sports Information Office Associate Athletic Director for Public Relations at 578-8226.