



October 20, 2020

Allan Blattner
Executive Director of Carolina Housing
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Chapel Hill, North Carolina 27599

Sent via Electronic Mail (allan_blattner@unc.edu)

Dear Mr. Blattner:

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 appreciates that the University of North Carolina (UNC) remains one of the few institutions in the country whose policies earn a “green light” rating from FIRE. We are, however, concerned by a report that students serving as Resident Assistants at UNC Chapel Hill have been told by supervisors that they may be fired for speaking with the media.¹ A blanket prohibition against speaking to the press—as the RAs granted anonymity by *The Daily Tar Heel* apparently interpreted this directive—would violate students' fundamental First Amendment rights. We request that UNC clarify its students' rights and revise any policy limiting their right to speak with the press in their individual capacities.

The Carolina Housing Media Relations Policy provides that employees of Carolina Housing, which include RAs, must report media inquiries to their supervisors when they are asked to “make comments on behalf of the department or as an employee of the department.”² While the policy includes this reference to employees speaking on behalf of Carolina Housing, which the university may properly regulate, other aspects of the policy could be—and apparently have been—read to mean that RAs are proscribed from speaking to the media even in their individual capacities.

¹ Praveena Somasundaram, ‘Don't rock the boat’: UNC resident advisers grapple with media policy, DAILY TAR HEEL, Oct. 19, 2020, <https://www.dailytarheel.com/article/2020/10/university-housing-ras-first-amendment>.

² Carolina Housing, *Carolina Housing Media Relations Policy*, UNIV. OF NORTH CAROLINA AT CHAPEL HILL.

For example, the policy specifies that “[a]ll media contacts . . . that are made . . . to individual staff members are to be handled as this policy dictates.”³ The policy then goes on to explain a procedure under which employees are required to speak with their supervisors and secure permission from senior staff members before responding to media inquiries.⁴ Although the policy recognizes that “student staff” deserve the same rights as all other residents, the confusing language of the policy has reportedly led many RAs to believe that their jobs would be at risk if they spoke to the media in their private capacities without securing permission.⁵

In addition to maintaining a confusing media *policy*, Carolina Housing reportedly maintains a *practice* of restricting RAs from speaking to the media. As reported by the *Tar Heel*, Carolina Housing supervisors have warned RAs that they could lose their positions for speaking with the press.

Both UNC’s policy and practice threaten the expressive rights of the university’s RAs.

RAs and other student employees retain a First Amendment right to speak to the media about matters of public concern, even when they reference their employment or are identified as being employed by Carolina Housing.⁶ It has long been settled law that the First Amendment is binding on public universities.⁷ Students who take employment roles at public institutions do not “relinquish First Amendment rights to comment on matters of public interest by virtue of government employment.”⁸ Instead, they retain their right to speak as citizens on matters of public concern.⁹

UNC’s apparent blanket prohibition against speaking to the media imperils that right because it bars RAs from speaking to reporters about any issue. The potential scope of forbidden subjects includes matters of profound public concern—that is, any subject that “can be fairly considered as relating to any matter of political, social, or other concern to the community.”¹⁰

³ *Id.*

⁴ *Id.*

⁵ It is our understanding that RAs who are being led to believe that the unclear Media Relations Policy forbids them from speaking to the media in their individual capacities also believe that the Nondisclosure Agreement also forbids them from speaking to the media about matters of public concern. While the agreement appears to apply only to confidential information, such as private student or personnel information, it is incumbent upon UNC to ensure RAs and their supervisors understand that neither the Media Relations Policy nor the Nondisclosure Agreement forbids them from speaking to the media in their individual capacities on matters of public concern.

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); accord *Inova Health Sys. v. NLRB*, 795 F.3d 68, 81–87 (D.C. Cir. 2015) (upholding NLRB determinations that hospital system violated National Labor Relations Act by punishing and/or not promoting nurses who discussed working conditions).

⁷ *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).

⁸ *Connick v. Myers*, 461 U.S. 138, 140 (1983).

⁹ *Bradley v. James*, 479 F.3d 536, 538 (8th Cir. 2007).

¹⁰ *Snyder v. Phelps*, 562 U.S. 453 (2011).

UNC's response to the COVID-19 pandemic, including its latest move of terminating all RAs at the end of this month,¹¹ is of critical public concern, particularly to students concerned about how the pandemic will impact future semesters on campus. 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. The importance of speaking with RAs when covering the COVID-19 pandemic or other campus goings-on and their consequences can be illustrated in the *Tar Heel's* recent article about student staff being terminated to reduce spending costs.¹² To reiterate, if a person speaks about—but not on behalf of—their employer, their speech may be protected so long as it addresses matters of public concern. Consequently, RAs have a First Amendment right to publicly raise concerns about the university's response to COVID-19, their workplace conditions, or other important issues on campus.

Of course, the university may bar disclosure of individual students' or employees' confidential information and restrict RAs from purporting to speak on behalf of the university. However, a categorical prohibition against speaking to the media will not advance the university's interests. Instead, it will backfire, leading to stories—like that published by the *Tar Heel*—quoting anonymous students and citing anxiety among students about the university's transparency and safety.

Accordingly, we request that UNC publicly 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 appreciate your attention to our concerns, and we request a response to this letter by November 3, 2020.

Sincerely,



Sabrina Conza

Program Analyst, Individual Rights Defense Program

Cc: Amy Johnson, Vice Chancellor for Student Affairs
Rick Bradley, Director of Administrative Services
Charles Marshall, Vice Chancellor and General Counsel

¹¹ Praveena Somasundaram, *'It just feels really inconsiderate': Carolina Housing terminates student staff*, DAILY TAR HEEL, Sept. 14, 2020, <https://www.dailytarheel.com/article/2020/09/carolina-housing-staff-terminated>.

¹² *Id.*