



January 19, 2021

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 Haskell Indian Nations University (HINU). These actions indicate that HINU has substantially misrepresented its educational program, which purports to protect the freedom of expression of its students and faculty.

HINU has acted in a manner inconsistent with its constitutional obligations and representations. It has done so by (1) issuing a directive to student journalist Jared Nally threatening to punish him for engaging in basic newsgathering activities and (2) providing an undue punishment and failing to provide due process to student Russell Parker in the course of disciplining him for his protected expression.

Specifically, HINU's president issued a written "directive" prohibiting Nally—the editor-in-chief of *The Indian Leader*, HINU's student newspaper—from criticizing or making demands of HINU administrators and from requesting public records from the university, local police department, or other government agencies. HINU also appears to have engaged in retaliation against the *Leader* by refusing for months to complete the recognition process that makes the *Leader* an official student organization, thereby inhibiting the *Leader's* access to its student bank account.

FIRE, along with the Student Press Law Center and the Native American Journalists Association, addressed concerns about HINU’s conduct in an October 26, 2020, letter¹ to Dr. Ronald Graham, president of HINU. Graham purported to issue a belated withdrawal of the “directive” on November 20, but did not inform Nally that he had done so until three months after the “directive” was first issued. Nally first learned that the “directive” had been withdrawn—and that his First Amendment rights were not subject to the prior restraint unilaterally imposed by Graham—on January 13, 2021. This delay led to an inexcusable and unconstitutional chilling effect on Nally and the *Leader*’s expressive rights.

These are not the only examples of HINU’s history of actions intended to suppress student expression. In April 2020, HINU placed student Russell Parker on an emergency suspension, removing Parker from his on-campus housing during the COVID-19 pandemic, because he allegedly cursed at the university’s facilities foreman. As a result, Parker—thousands of miles from home—was forced to sleep in his car in the midst of a pandemic.² Then, when Parker requested that HINU administrators schedule the hearing as soon as possible because the loss of his housing rendered him homeless during the pandemic, HINU failed to provide him with a timely hearing. On April 16, Parker asked for a prompt appeal, but did not receive a hearing until June 18—more than a month later. If FIRE had not intervened by writing HINU a letter urging the university to provide Parker with a fair hearing immediately, HINU may have stalled Parker’s appeal hearing for even longer.

HINU is a public institution bound by the First Amendment. In addition to these constitutional requirements, HINU commits to its students and faculty, to the public, and to the Department that it protects the academic freedom and freedom of expression of students and faculty members. Additionally, HINU and the *Leader* came to a binding legal settlement agreement in 1989 prohibiting HINU from subverting the expressive rights of student publishers of the *Leader*. Relevant excerpts of these commitments and the settlement agreement are enclosed.

FIRE alerted HINU on October 26, 2020, that HINU’s Student Rights Office web page³ reads, “Lorem ipsum dolor sit amet, consectetur adipiscing elit, sed diam nonummy nibh euismod tincidunt ut laoreet dolore magna aliquam erat volutpat”—which is filler text. This issue has not been addressed as of January 19, 2021, leaving students unsure about their rights at HINU and further displaying HINU’s negligence when it comes to its students’ rights.

¹ See App. C.

² Haskell Indian Nations University: Denial of Hearing After Student Kicked Out of Campus Housing, FOUND. FOR INDIVIDUAL RIGHTS IN EDUC., (Apr. 29, 2020), <https://www.thefire.org/kansas-student-forced-to-sleep-in-car-after-university-kicks-him-out-of-housing-during-stay-at-home-order>.

³ Student Rights Office, HASKELL INDIAN NATIONS UNIV., (last visited Jan. 19, 2021), <https://www.haskell.edu/student-rights-office>.

Unfortunately, attempts to informally resolve many of these matters have revealed an institution whose lack of concern for students' fundamental constitutional rights has ossified. Even when organizations repeatedly brought concerns to the direct attention of the university's leadership, its leaders were slow to respond to urgent issues and negligent even when they responded belatedly.

HINU's clear pattern of First Amendment violations renders its representations a substantial *misrepresentation* in violation of 20 U.S.C. § 1094(c)(3) and 34 CFR 668.71(c).⁴ 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,



Sabrina Conza
Program Analyst, Individual Rights Defense Program

Encl.

- Appendix A: Excerpts of HINU's expressive rights policies
- Appendix B: HINU and the *Leader* 1989 Settlement Agreement
- Appendix C: Correspondence between FIRE and HINU

⁴ 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 HINU's Policies

I. Student Rights and Student Responsibilities

HINU's Student Rights, published within the HINU STUDENT HANDBOOK AND CODE OF STUDENT CONDUCT, provides, in pertinent part:⁵

Haskell recognizes that students have:

1. The right to understand the grading process at Haskell.
2. The right to an education that may take into consideration Native American or Alaska Native values and that incorporates applicable Federal and Tribal constitutional and statutory protections for individuals.
3. The right to be free from unreasonable search and seizure of their persons or property, to a reasonable degree of privacy, and to a safe and secure environment.
4. The right to make decisions for themselves where appropriate.
5. The right to freedom of religion and culture.
6. The right to freedom of speech and expression so long as the expression does not unreasonably disrupt the educational process or endanger the health or safety of the students or others.
7. The right to freedom of the press, except where material in student publications is libelous, slanderous, or obscene. (9)
8. The right to peaceably assemble and to petition for the redress of grievances.
9. The right to freedom from harassment or discrimination based on sex, race, color, national origin, religion, ancestry, sexual

⁵ HINU's Student Rights are set forth at pages 8–9 of the HINU STUDENT HANDBOOK AND CODE OF STUDENT CONDUCT (last visited Jan. 15, 2021) ("HANDBOOK"), *available at* <https://haskell.edu/wp-content/uploads/2017/01/Haskell-CSC-Table-of-Contents-7-22-16.pdf>.

orientation, disability, or, as specified by law, age, veteran status, marital or parental status, or degree of Indian blood.

10. The right to due process. Every student, student organization, and campus organization is entitled to due process and appeal in every instance of disciplinary action for alleged violation of Haskell expectations. Please see Code of Conduct section on page 24. A student or organization may waive the right to a hearing and use the alternative dispute resolution system or may choose to admit responsibility for misconduct and accept disciplinary sanctions from Haskell.

11. The right to reschedule examinations and tests, other than final examinations, which occur on mandated religious holidays or during traditional cultural ceremonies, provided that the students notify their instructors at the beginning of the semester.

12. The right to have respect for his/her property.

13. The right to have student representation in the decision-making and policy forming groups.

14. The right to be notified of proposed changes to student responsibility and academic policies.

II. Classroom Expression

HINU's Student Rights, published within the HINU STUDENT HANDBOOK AND CODE OF STUDENT CONDUCT, provides, in pertinent part:⁶

Discussion and expression of all views relevant to the subject matter are permitted in the classroom subject to Haskell's CIRCLE values. The responsibility of the instructor is to maintain order.

a. Students are responsible for learning the content of any course for which they are enrolled.

b. Requirements of participation in classroom discussion and submission of written exercises are consistent with this section.

⁶ HANDBOOK 10-11.

Students are expected to conduct themselves with communication, respect, cooperation, leadership and excellence. Disruptive, disrespectful behavior which poses a threat to the student or others, *or disrupts the learning environment of the classroom*, may result in sanctions and will be enforced through the Office of Vice President of Academics

III. Campus Expression

HINU's Student Rights, published within the HINU STUDENT HANDBOOK AND CODE OF STUDENT CONDUCT, provides, in pertinent part:⁷

Discussion and expression of all views is permitted, consistent with Haskell's CIRCLE values and subject only to requirements for the maintenance of order. Support of any cause by orderly and peaceful means that does not disrupt Haskell's operations is permitted.

Students, groups, and organizations may invite and hear any persons of their choosing, subject only to the requirements for use of Haskell facilities

IV. Academic Freedom

HINU's Student Rights, published within the HINU STUDENT HANDBOOK AND CODE OF STUDENT CONDUCT, provides, in pertinent part:⁸

While Haskell is committed to the principles of free inquiry and free expression, sex discrimination and sexual harassment are neither legally protected expression nor the proper exercise of academic freedom.

⁷ HANDBOOK 11.

⁸ HANDBOOK 53.

Appendix B:

HINU and *The Indian Leader* 1989 Settlement Agreement

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

FILED
U.S. DISTRICT COURT
DISTRICT OF KANSAS

SEP 19 11 44 AM '89

RALEIGH, MO.

BY ATINPEKA DEPUTY
K.S.

THE INDIAN LEADER ASSOCIATION, ET AL.,

Plaintiffs,

vs.

Case No. 89-4063-R

UNITED STATES DEPARTMENT OF THE INTERIOR,
ET AL.,

Defendants.

ORDER APPROVING SETTLEMENT AGREEMENT

NOW ON this 18th day of September 1989, the parties appear before the Court to announce a settlement of the claims of the Plaintiffs herein. The Plaintiffs appear through their attorney, Patrick R. Nichols; the Defendants appear through their attorney, David Cooper.

WHEREUPON, the parties announce to the Court that they have settled and resolved their differences, and entered into a settlement agreement in writing, which is appended hereto.

WHEREUPON, the Plaintiffs move orally to dismiss without prejudice all parties hereto, with the exception of Haskell Indian Junior College. The Court sustains said motion.

THEREUPON, the Court reviews the settlement agreement between the parties, guaranteeing the rights of free expression to the Indian Leader Association and the student journalist Plaintiffs, and find said agreement is valid, just and equitable. The Court approves the agreement.

Pursuant to paragraph 14 of the settlement agreement, the Plaintiffs move to dismiss the remaining party, Haskell Indian Junior College of the Bureau of Indian Affairs, subject to the provisions and terms of the settlement agreement. The Court sustains the motion and orders that the action be dismissed upon the terms of said motion.

The Court orders that hereafter the settlement agreement shall immediately bind the parties to all of its provisions and govern their conduct accordingly.

/s/ RICHARD D. ROGERS

Honorable Richard D. Rogers
United State District Judge

APPROVED:

Patrick R. Nichols

Patrick R. Nichols
Attorney at Law
700 Jackson, Suite 703
Topeka, Kansas 66603
(913) 357-4050
Ks. S. Ct. No. 09396
Attorney for Plaintiffs

David M. Cooper

David Cooper
Assistant United States Attorney
U.S. Department of Justice
444 S.E. Quincy
Topeka, Kansas 66603

SETTLEMENT AGREEMENT

This Settlement Agreement is made between the Indian Leader Association, Marcel Stevens, Laurey Chapman, Ardina Glenn, Cynthia Grant, Tina Melton, Harvey Ross, Cordell Whitetree and Catherine Williams and Haskell Indian Junior College of the Bureau of Indian Affairs of the United States Department of Interior to settle and compromise issues before the United States District Court for the District of Kansas in Indian Leader Association v. United States Department of the Interior, Case No. 89-4063-R (filed March 30, 1989).

1. Parties to Settlement Agreement. The parties to this Settlement Agreement are the plaintiff, Indian Leader Association, an unincorporated student association which publishes The Indian Leader (the "Association"), and plaintiffs Marcel Stevens, Laurey Chapman, Ardina Glenn, Cynthia Grant, Tina Melton, Harvey Ross, Cordell Whitetree and Catherine Williams, individually and in their capacities as editors, reporters and representatives of the Association ("Plaintiffs"), and defendant Haskell Indian Junior College of the Bureau of Indian Affairs of the United States Department of the Interior ("Haskell"), which enters into this Settlement Agreement through the agency of Jim Baker, Acting President of Haskell.

Nothing in this Settlement Agreement shall have any bearing on the academic standing of the named plaintiffs or any member of the Indian Leader Association. Nor shall this Settlement Agreement bear on the eligibility of a student to serve as an officer of the Indian Leader Association under the college's rules governing extracurricular activities.

2. Student Editorial Control. The parties agree that the members of the Association and the Editorial Board of The Indian Leader have the right to editorial control of the contents of The Indian Leader newspaper as described in the attached Plan of Operation of the Indian Leader Association ("Plan of Operation").

3. No Prior Restraint or Censorship. Haskell agrees that no officer, agent, instructor or employee of Haskell shall:

(a) censor, edit or modify the contents of The Indian Leader newspaper in violation of the First Amendment of the United States Constitution;

(b) restrain, obstruct or prohibit the publication of The Indian Leader newspaper or otherwise inhibit the free expression of members of the Association in violation of the First Amendment of the United States Constitution; however, nothing in this Settlement Agreement shall prevent Haskell, the BIA, the Department of the Interior, or Congress from withdrawing any federal funding for The Indian Leader, or from disposing of the printing press on

the Haskell campus pursuant to the provisions of the Federal Property and Administrative Services Act or other applicable law;

(c) suspend the publication of The Indian Leader newspaper ~~on the ground that a vacancy has arisen in the position of faculty adviser to the Indian Leader newspaper or the Association.~~

(d) refuse any written request for the disbursement of funds, reasonably related to the management or publication of The Indian Leader, from the Indian Leader Association Activity Fund, the Club Fund or any other Indian Leader Association account containing student monies in the Haskell Student Bank which is supported by a written resolution of the Editorial Board of The Indian Leader or the full membership of the Association finding "First Amendment Grounds for Funds Withdrawal by Students" as described in the attached Plan of Operation;

(e) refuse to approve a Plan of Operation for the Association substantially similar to the attached Plan of Operation, which is incorporated herein by reference and made an integral part hereof, and which shall be the Plan of Operation in effect for the 1989-1990 school year, or suspend the publication of The Indian Leader on the grounds that the Plan of Operation has not been approved; provided, that nothing in this Settlement Agreement shall prevent Haskell from establishing a journalism or communications department and incorporating The Indian Leader into the curriculum of such an academic program; that if such an academic program is established, Haskell and the members of The Indian Leader Association may revise the Plan of Operation of The Indian Leader Association to reflect incorporation of The Indian Leader under the curriculum of that program; provided further, that nothing in this Settlement Agreement is intended to prevent the members of The Indian Leader Association from adopting a Plan of Operation, or other organic operating charts or substantially dissimilar to the attached Plan of Operation; or

(f) have the right to excise any material from The Indian Leader on the grounds that it is either libelous or obscene.

4. Role of Faculty Adviser. The parties agree that the faculty adviser shall discharge his or her responsibilities consistent with the following guidelines:

(a) The faculty adviser to the Association may freely advise and instruct student editors and reporters in the subject of journalism and relevant professional standards, commend and critique the work product of student journalists, offer fiscal and technological guidance to the newspaper staff in business and production operations and provide whatever assistance to the newspaper and the student journalists the faculty adviser deems appropriate.

(b) A faculty adviser may make nonbinding recommendations to the student editors which they may, in their sole discretion, take into consideration in the free exercise of their independent editorial judgment.

(c) Although a faculty adviser of the Association may freely offer advice and assistance to student members of the Association, neither the faculty adviser nor any other Haskell officer or employee has the right to censor, edit or modify in any way the content of The Indian Leader.

(d) The faculty adviser is under an affirmative duty to facilitate the disbursement of such funds allocated to the Association as directed by the Editorial Board and the Association by majority vote, supported by written resolution, which are reasonably related to the management and publication of The Indian Leader.

(e) The faculty adviser shall, to the best of his or her ability, adhere to the ethical standards set forth in the attached Code of Ethics of College Media Advisers.

5. Responsibility of Student Journalists. Sole legal responsibility for the contents of The Indian Leader shall rest with the individual members of the Indian Leader Association as recognized in 25 C.F.R. § 42.3 (1988). No legal responsibility for the contents of The Indian Leader shall be imputed to Haskell or the faculty adviser, the Bureau of Indian Affairs or the United States Department of the Interior. Plaintiffs understand that they may be held personally accountable for the contents of The Indian Leader in a court of law, if those contents are libelous or obscene, or infringe copyrights or trademarks, or otherwise give rise to civil liability.

6. Newspaper Account in the Student Bank. Those monies which may be received or collected by Haskell on behalf of the Association, such as the Association's allocation of student activity fees, if any, shall be maintained in the Haskell Student Bank in strict compliance with the applicable rules contained in the Bureau of Indian Affairs Manual ("BIAM"), this section of the Settlement Agreement and the Plan of Operations. Such monies shall be:

(a) the subject of a separate accounting in the Haskell Student Bank and assigned a separate account number;

(b) the subject of a monthly account statement prepared by the Haskell Student Bank which shall be presented to the President of the Indian Leader Association; and

(c) disbursed in accordance with this Settlement Agreement and the attached Plan of Operations.

7. Off-Campus Bank Account. Those monies which are received, collected or raised off campus by the Association, without any intermediation by Haskell, may be deposited, at the election of the Association, in either the Student Bank account or in an off-campus account maintained at a local bank in Lawrence, Kansas. No disbursement from an off-campus bank account shall be made, however, without the signature of at least two officers of the Association on the draft drawn on such local bank. A copy of the monthly accounts of such off-campus bank account shall be published regularly in The Indian Leader. Nothing in this Settlement Agreement shall be read to prohibit Haskell from devising and implementing procedures for managing and accounting for on-campus revenue-raising activities of students.

8. Elections. As soon as possible following the execution of this Settlement Agreement, the President of the Association shall call a meeting of the membership of the Association for the purpose of electing the editors of The Indian Leader and the officers of the Association for the 1989-1990 academic year. This meeting shall be called within the first 30 days of the beginning of the fall 1989 semester at Haskell.

9. Control of Contributions for Subscriptions. Voluntary contributions made by individuals for subscriptions to The Indian Leader shall no longer be paid to the Haskell Indian Junior College Foundation and shall instead be paid directly to the Association Club Account in the Student Bank.

10. Waiver of Claims. This Settlement Agreement represents the final understanding between the parties concerning the resolution of the issues before the United States District Court for the District of Kansas in Indian Leader Association v. United States Department of Interior, Case No. 89-4063-R (filed March 30, 1989). All parties to this Settlement Agreement hereby release the others from any claims or causes of action, and the parties and their counsel agree not to initiate or cause to be initiated, any further proceedings between any of the parties or their counsel, or make any further requests regarding the facts of this case.

11. Covenant of Good Faith and Fair Dealing. The parties agree to interpret and implement this Settlement Agreement in good faith and with due regard for both the First Amendment rights of student journalists and the legitimate educational and administrative interests of Haskell. It is the central purpose of this Settlement Agreement to secure the regular publication of The Indian Leader free from any prior restraint or censorship. This Settlement Agreement is contingent upon the reciprocal performance of the specified obligations by all of the parties. In the event that any party acts in bad faith or breaches this Settlement Agreement, the aggrieved party shall be free to pursue appropriate legal remedies in a court of law. Nothing in this Settlement

Agreement shall be construed to restrict or limit the right of any of the parties to commence litigation if any party fails to comply with all of the terms and conditions of this Settlement Agreement.

~~12. Use of Printing Press.~~ The parties agree that the use of the federally authorized printing press at Haskell is subject to the Government Printing and Binding Regulations published by the Joint Committee on Printing of the U.S. Congress. See 44 U.S.C. §§ 103, 501, 502.

13. Recognition of Mutual Rights. Any and all rights and responsibilities under this Agreement are set forth in recognition of the mutual rights of the defendant Haskell, and the rights of the students to free speech, press and expression. The Agreement recognizes various rights of Haskell hereunder to alter the Plan of Operation in conjunction with the student journalists (3)(e), to reduce or eliminate funding (3)(b), and to dispose of or sell the printing presses under various provisions of this Agreement (12). These rights may not be exercised by Haskell in response to, or as a result of, articles, photographs or any other content of The Indian Leader. Further, such actions may not legitimately be performed under this Agreement as a form of prior restraint, or otherwise as intended to limit or restrict the free expression of ideas or rights to the students as recognized in this Agreement. Any exercise by Haskell of the rights noted in this paragraph shall be done following notice to The Indian Leader Association, stating the action to be taken and the reasons therefor. Such notice shall be delivered to the editor-in-chief and posted on the Student Activities bulletin board at least thirty (30) days prior to any such contemplated action.

14. Signature and Court Approval. This Agreement shall be signed by all the parties named in Section 1 of this Settlement Agreement or their duly authorized representatives. This Settlement Agreement shall be submitted to the Honorable Richard D. Rogers, Judge for the United States District Court for the District of Kansas, for final approval and shall not become effective until such final approval is obtained. After such final approval has been obtained, the Plaintiffs shall agree to the dismissal without prejudice of the action against all named defendants except Haskell. The Settlement Agreement shall then immediately bind the remaining parties to all of its provisions, and a judgment of dismissal of the action, subject to the terms of the Settlement Agreement, shall then be jointly submitted to the court by the remaining parties.

IN WITNESS WHEREOF, the parties have caused this Settlement Agreement to be executed by their duly authorized representatives on this _____ day of _____, 1989.

THE INDIAN LEADER ASSOCIATION

Marcel Stevens
MARCEL STEVENS
Managing Editor and President
The Indian Leader Association

Cynthia E. Grant
CYNTHIA GRANT
Student Journalist

Harvey Ross
HARVEY ROSS
Student Journalist

CordeLL A. Whitetree
CORDELL WHITETREE
Student Journalist

Dario F. Robertson
DARIO F. ROBERTSON
Counsel for Plaintiffs

Patrick R. Nichols
PATRICK R. NICHOLS
Counsel for Plaintiffs

HASKELL INDIAN JUNIOR COLLEGE

Jim W. Baker
JIM BAKER
Acting President
Haskell Indian Junior College

David M. Cooper
DAVID M. COOPER
Assistant U.S. Attorney
Counsel for the Defendant

THE INDIAN LEADER ASSOCIATION
Haskell Indian Junior College
Lawrence, Kansas 66046

PLAN OF OPERATION

I. NAME

The name of this organization is The Indian Leader Association and shall hereafter be referred to as the Association.

II. PURPOSE

The purpose of the Association is to produce The Indian Leader newspaper, an independent student publication, and the Haskell Yearbook. The Indian Leader newspaper will be produced and published approximately six times each semester and the Haskell Yearbook will be produced and published the spring semester of each school year. The Association will also maintain a separate account to accept funds and donations on behalf of the newspaper and for disbursing cash payments as incentives to students who contribute articles, photographs and illustrations to The Indian Leader.

The Indian Leader is a nationally distributed Native American newspaper edited and published by students at Haskell Indian Junior College for the purpose of promoting the free and informed debate and discussion of (1) topics of special interest to Haskell students and alumni, (2) issues of special importance to Native Americans generally and (3) all newsworthy topics and public issues of general interest to American citizens.

The Indian Leader is published by the students at Haskell Indian Junior College and the members of the Association in the exercise of their individual rights to free speech and freedom of the press guaranteed by the First Amendment of the United States Constitution. These fundamental First Amendment rights have been expressly recognized as rights which individual students enjoy who attend Bureau of Indian Affairs schools in Part 42 of Title 25 of the Code of Federal Regulations. Student Rights and Due Process Procedures, 25 C.F.R. § 42.3(e)-(f) (1988). These basic rights have also been reaffirmed in Part III of the Code of Student Rights and Responsibilities of Haskell Indian Junior College (1988).

The Indian Leader Association is committed to improving the ability of Native Americans to determine their own destiny by providing an open public forum in which all concerned citizens, regardless of race, creed, color, sex, religion or national origin, might freely discuss the important public issues of the day. The members of the Association believe that by providing such a public forum, readers and contributors alike will improve their understanding of the true meaning of leadership, citizenship and democracy in contemporary American society through an open, honest

and fair-minded exchange of views.

III. MEMBERSHIP AND OFFICERS OF THE ASSOCIATION

A. General

To qualify as a member of the Association, an individual must:

(a) be an enrolled student at Haskell Indian Junior College;

(b) submit a news story, essay, proposed editorial, poem, short story, photograph or any other journalistic or literary work, not including advertisements, letters to the editor and notices, for publication in The Indian Leader, or participate in the production or circulation of The Indian Leader or the Haskell Yearbook.

(c) receive written notice that the submission has been accepted for publication in The Indian Leader; and

(d) inform the Association, orally or in writing, of an intention to become a member of the Association.

The Editor-in-Chief shall be responsible for keeping a current list of Association members and publishing said list at least once per semester in The Indian Leader.

In the event that any member fails to attend three consecutive meetings of the Association, without excuse, that person may be removed from the membership rolls of the Association by majority vote.

B. Officers

The officers of the Association shall include a President, Vice President, Treasurer and Secretary. The person elected President of the Association shall also serve as Editor-in-Chief of The Indian Leader and the person elected Vice-President shall also serve as Executive Editor of The Indian Leader.

Officers must maintain "academic good standing," as defined on page 35 of the Haskell Bulletin, 1988-1990, in order to receive a salary as specified in Appendix I containing the 1989-1990 Budget for The Indian Leader. Decisions made at duly convened meetings of the Association are binding on members.

All officers of the Association shall have taken or shall be currently enrolled in at least one course in English or Journalism at Haskell Indian Junior College at the time his or her term of office shall commence in order to be eligible to hold such office.

The President shall be the Editor-in-Chief and shall be responsible for the general operation of the paper and the Association. The President shall pick up and distribute mail daily.

The Editor-in-Chief shall conduct regular and special meetings of student reporters, assign stories, edit manuscripts, oversee reporters and lay out The Indian Leader.

The Executive Editor shall assist the Editor-in-Chief in carrying out his or her assigned duties and shall succeed to the position of Editor-in-Chief in the event of a vacancy in that office prior to next regularly scheduled election.

The circulation manager shall (1) recommend to the printers the approximate number of issues of the newspaper to be published, (2) coordinate the distribution of issues on the day of publication, (3) maintain a current mailing list, (4) make additions, deletions, corrections and other appropriate changes in mailing list, (5) make labels or have labels made, (6) coordinate the process of labeling The Indian Leader for mailing, (7) keep a file of correspondence, and (8) make a weekly report, oral or written, to the Association.

Other positions in the Association shall be established upon the majority vote of the members of the Association. The Association shall make the guidelines and prescribe the duties of all new positions. Officers may be removed from office upon the vote of two-thirds of the members of the Association.

IV. PARLIAMENTARY AUTHORITY

The rules contained in the current edition of Robert's Rules of Order Newly Revised shall govern the Association in all cases to which they are applicable and in which they are not inconsistent with this Plan of Operation and any special rules of order the Association may adopt.

V. MEETINGS

Meetings of the Association shall be held weekly and will be open to all Haskell students and to the public.

At the beginning of each semester, the Association shall decide upon a day, time and place for such regular weekly meetings. Once the day, time and place has been decided by the Association and notice of such has been posted on the bulletin board at the Student Senate Building, no further notice shall be required for the Association to conduct business at such regular weekly meetings.

Any meeting of the Association not held on the day, time and

place of the regular weekly meeting may be properly convened only upon three days' prior written notice. Such notice shall be made to the Association by posting an announcement of the meeting on The Indian Leader Bulletin Board. This notice requirement shall apply to any meeting of the Association, other than regular meetings, ~~referenced in this Plan of Operation, including but not limited to~~ meetings mentioned in Sections III(B), VI and VIII(B) of this Plan of Operation.

A majority of the members of the Association shall constitute a quorum.

VI. EDITORIAL BOARD AND EDITORIAL CONTROL

The Editorial Board shall consist of the Association President and Editor-in-Chief, the Vice President and Executive Editor, Copy Editor, the Circulation Manager, and the Darkroom Manager. Other positions and members of the Editorial Board may be added by majority vote of either the Editorial Board or the members of the Association. A majority of the members of the Editorial Board shall constitute a quorum.

The Editorial Board shall have primary responsibility for and control of the editorial content of The Indian Leader. Day-to-day editorial decisions shall be made by the Editor-in-Chief, but any question of editorial policy may be put to the vote of the Board of Editors at any regular or special meeting of the Board of Editors.

In the event that the faculty adviser, any member of the Editorial Board or any member of the Association requests, prior to publication, a special review of any portion of an issue of The Indian Leader to determine whether it is libelous or obscene, the entire Editorial Board shall:

(a) carefully read and evaluate the identified material to determine whether it is libelous or obscene;

(b) seek the advice of the faculty adviser and, if possible, experts in the field of student press rights and the law of libel and obscenity, such as legal counsel and journalists designated by the Student Press Law Center in Washington, D.C., the Journalism Education Association or College Media Advisers; and

(c) consult, when appropriate, authoritative treatises for more detailed guidance in determining whether the identified material is libelous or obscene, such as:

(1) Louis E. Ingelhart, Freedom for the College Student Press (Westport, Conn.: Greenwood Press, 1985): 125-151 (on libel), 159-168 (on obscenity); and

(2) Student Press Law Center, Law of the Student Press

(Washington, D.C.: Student Press Law Center, 1985): 31-38 (on libel), 38-41 (on obscenity);

(d) make a final, independent determination of whether to publish the identified material; and

(e) report its determination to the faculty adviser within 24 hours following such decision.

Any student who has submitted an article for publication may withdraw that article prior to publication upon reasonable written notice to the Editor-in-Chief, provided that such withdrawal can be accomplished without a substantial delay in publication.

VII. FACULTY ADVISER

One or more faculty advisers may be appointed by Haskell Indian Junior College to assist students in the publication of The Indian Leader.

The faculty adviser to the Association may freely advise and instruct student editors and reporters in the subject of journalism and relevant professional standards, commend and critique the work product of student journalists, offer fiscal and technological guidance to the newspaper staff in business and productions operations and provide whatever assistance to the newspaper and the student journalists the faculty adviser deems appropriate.

A faculty adviser may make nonbinding recommendations to the student editors which they may, in their sole discretion, take into consideration in the free exercise of their independent editorial judgment.

Although a faculty adviser of the Association may freely offer advice and assistance to student members of the Association, neither the faculty adviser nor any other Haskell officer or employee has the right to censor, edit or modify in any way the content of The Indian Leader.

The faculty adviser is under an affirmative duty to facilitate the disbursement of such funds belonging to the Association as directed by the Editorial Board and the Association by majority vote, supported by written resolution, which are reasonably related to the management and publication of The Indian Leader.

The faculty adviser shall, to the best of his or her ability, adhere to the ethical standards set forth in the attached Code of Ethics of College Media Advisers.

The right of the Association to publish The Indian Leader shall not be conditioned upon the prior appointment of a faculty adviser by Haskell Indian Junior College. Consequently,

publication of The Indian Leader shall not be interrupted as a result of the inability or unwillingness of Haskell Indian Junior College to appoint a faculty adviser to work with the Association in the event of a vacancy in that position.

~~The faculty adviser has no power to refuse to facilitate the disbursement of funds reasonably related to the management and publication of The Indian Leader as determined by the Editorial Board or the Association by majority vote.~~

VIII. SALARIED POSITIONS OF THE INDIAN LEADER

A. Officers With Salaries

Salaried positions in the Association shall be those of President, Vice President, Copy Editor, Circulation Manager, Darkroom Manager. The Typesetter shall also receive a salary.

B. Assistant Officers

Assistant officers shall be elected by majority vote of the members of the Association at the beginning of the last semester prior to the graduation of each salaried officer of the Association. Such assistant officers shall serve as apprentices to the graduating officers for the purpose of receiving the necessary training and experience to assume the responsibilities of the graduating officer after commencement. The assistant officers shall assume the office and responsibilities of the graduating officers on the date of the next commencement at Haskell Indian Junior College following their appointment as assistant officers. Any office not so filled by an assistant officer shall be filled by majority vote of the members of the Association in a regular or special election.

IX. COMPENSATION AND AWARDS

Compensation and awards shall be as specified in this Section VIII.

Salaried positions shall be compensated according to the rates and amounts specified in Appendix I containing the 1989-90 Budget for The Indian Leader. Students holding salaried positions shall not be paid any other compensation specified in this section.

Student reporters shall be paid \$1.25 per column inch for articles published. Student photographers shall be paid \$5.00 for each photograph published. Student artists shall be paid an amount to be determined by majority vote of the Association for each published illustration or cartoon.

The amount and disbursement of monies for any type of contest sponsored by The Indian Leader must be approved by majority vote

of the Association.

X. ACCOUNTS

A. Activity Fund

Any funds allocated to The Indian Leader Association from the student activity fee, paid by each student of Haskell Indian Junior College each semester, shall be deposited in The Indian Leader Association Activity Fund in the Student Bank. Other monies received or collected by Haskell on behalf of the Association shall also be deposited in that Activity Fund.

Any officer, editor or any other member of the Association or any currently enrolled student or alumnus of Haskell Indian Junior College may, upon written request, examine the records of account of The Indian Leader Association Activity Fund in the Student Bank and may obtain a copy of any such records of account at his or her own expense.

A summary of the records of account shall be published annually in The Indian Leader.

In the absence of a finding by the Association of "First Amendment Grounds for Funds Withdrawal by Students" as described in the following paragraph, withdrawal from the Indian Leader Association Activity Fund shall be made by a faculty adviser, supported by signatures from a student member of the Editorial Board and the Association President.

In the event that the Association or the Editorial Board passes by 2/3 (two-thirds) vote a resolution finding "First Amendment Grounds for Funds Withdrawal by Students," withdrawal from the Indian Leader Association Activity Fund shall be made by President of Haskell Indian Junior College, if the request is reasonably related to the management or publication of The Indian Leader, supported by the signatures of the Association President and another member of the Editorial Board. "First Amendment Grounds for Funds Withdrawal by Students" exist whenever Haskell Indian Junior College has failed to appoint at least one faculty adviser to the Association or whenever the Association, by 2/3 (two-thirds) vote, reasonably determines that a faculty adviser (1) is in any way obstructing the publication of The Indian Leader, (2) refuses to comply with requests from the Association or the editorial board for disbursements reasonably related to the management or publication of The Indian Leader, or (3) attempts in any way to censor, edit or modify the content of The Indian Leader.

Each withdrawal from The Indian Leader Association Activity Fund must be approved by a majority vote of the Editorial Board or the Association and supported by written resolution. Each such resolution must explain the purpose of every withdrawal of funds.

Receipts shall be collected within five (5) days following the disbursement of all funds. A full written accounting of any monies withdrawn pursuant to a resolution finding "First Amendment Grounds for Funds Withdrawal by Students" shall be given to a faculty adviser or, if there is no faculty adviser, to the President of Haskell Indian Junior College within five (5) days following the withdrawal transaction.

Nothing herein binds the federal government (or Haskell) to spend federal appropriated funds to publish The Indian Leader.

B. Club Fund

Money raised by members may, at the election of the Association, be deposited into a Club Fund at the Student Bank or in an off-campus account at a local bank in Lawrence, Kansas. Such money may be withdrawn for (1) student entertainment, (2) contracting outside services and (3) such other uses benefiting the Association as the Editorial Board may, in its sole discretion, determine to be necessary or appropriate.

In the absence of a determination by the Association of "First Amendment Grounds for Funds Withdrawal by Students" as described in the following paragraph, withdrawal from a Club Fund maintained at the Student Bank shall be made by faculty adviser, supported by signatures from any two student officers of the Association.

In the event that the Association or the Editorial Board passes by majority vote a resolution finding "First Amendment Grounds for Funds Withdrawal by Students," withdrawal from the Club Fund shall be made by the President of Haskell Indian Junior College, supported by the signatures of the Association President and another officer of the Association. "First Amendment Grounds for Funds Withdrawal by Students" exist whenever Haskell Indian Junior College has failed to appoint at least one faculty adviser to the Association or whenever the Association, by majority vote, reasonably determines that a faculty adviser (1) is in any way obstructing the publication of The Indian Leader, (2) refuses to comply with requests from the Association or the editorial board for disbursements reasonably related to the management or publication of The Indian Leader, or (3) attempts in any way to censor, edit or modify the content of The Indian Leader.

Each withdrawal from the Club Fund must be approved by a majority vote of the Editorial Board or the Association and supported by written resolution. Each such resolution must explain the purpose of every withdrawal of funds. Receipts shall be collected following the disbursement of all funds. A full written accounting of any monies withdrawn pursuant to a resolution finding "First Amendment Grounds for Funds Withdrawal by Students" shall be given to a faculty adviser or, if there is no faculty adviser, to the President of Haskell Indian Junior College within five (5)

days following the withdrawal transaction.

C. Contributions for Mailed Subscriptions

~~The Indian Leader shall be distributed free of charge to anyone interested in receiving a copy. Any person wishing to receive a mailed subscription to The Indian Leader will be asked to make a \$5.00 contribution directly to The Indian Leader Association Activity Fund by check or money order. The next edition of the Haskell Bulletin shall be amended to provide for the payment of such \$5.00 contributions directly into The Indian Leader Association Activity Fund, rather than the Haskell Foundation, a tax exempt organization which has not direct relationship with and provides no funding to The Indian Leader Association.~~

D. Off-Campus Bank Account

Those monies which are received, collected or raised off campus by the Association, without any intermediation by Haskell, may be deposited, at the election of the Association, in either the Student Bank account or in an off-campus account maintained at a local bank in Lawrence, Kansas. No disbursement from an off-campus bank account shall be made, however, without the signature of at least two officers of the Association on the draft drawn on such local bank. A copy of the monthly accounts of such off-campus bank account shall be published regularly in The Indian Leader.

APPENDIX I

1989-90 BUDGET FOR THE INDIAN LEADER

Office
Key
21

<u>Position</u>	<u>Salary</u>	<u>Times 12 Issues</u>
Editor-in-Chief	\$33.50	402.00
Executive Editor	33.50	402.00
Copy Editor	33.50	402.00
Circulation Manager	33.50	402.00
Darkroom Manager	33.50	402.00
Typesetter	33.50	402.00
Assistant Circulation	33.50	402.00
Assistant Darkroom	33.50	402.00
Assistant Typesetter	33.50	402.00
Freelance Compensation	500.00 (per sem.)	\$1,000.00 (x2 sem.)
Miscellaneous	300.00 (per sem.)	600.00 (x2 sem.)
Travel Expense	750.00 (per sem.)	1,500.00 (x2 sem.)
<u>TOTAL</u>	\$3,158.00 (per sem.)	\$6,718.00 (x2 sem.)

PLAN OF OPERATION APPROVAL

College Officials

Date Approved

Jimmy M. Goh
PRESIDENT

9/14/89
DATE

DIRECTOR OF STUDENT ACTIVITIES

DATE

Kindall D. McHenry
STUDENT SENATE PRESIDENT

9-15-89
DATE

Hannes Samkeit
SPONSOR

9/15/89
DATE

Organization Officers

Date Approved

Marcel Stevens
PRESIDENT

9-14-89
DATE

(POSITION VACANT)
VICE PRESIDENT

DATE

Harvey E. Lass J.
SECRETARY

15 Sept 89
DATE

Harvey E. Lass J.
TREASURER

15 Sept 89
DATE

Appendix C:

Correspondence with HINU

Correspondence with HINU is attached, as follows:

- April 24, 2020, FIRE letter to HINU Acting President Jim Rains
- Oct. 26, 2020, FIRE letter to HINU President Dr. Ronald Graham
- Jan. 13, 2021, Department of Interior, Division of Indian Affairs' Jennifer Segal Wiginton email to FIRE
- Undated, HINU President Dr. Ronald Graham letter to FIRE
- Jan. 19, 2021, FIRE letter to HINU

April 24, 2020

FIRE letter to HINU Acting President Jim Rains



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 cussed 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-Docuements-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).

Oct. 26, 2020

FIRE letter to HINU President Dr. Ronald Graham



October 26, 2020

Dr. Ronald Graham
Haskell Indian Nations University
Office of the President
Navarre Hall
155 Indian Ave
Lawrence, Kansas 66046-4800

URGENT

Sent via Electronic Mail (ronald.graham@bie.edu)

Dear President Graham:

FIRE,¹ NAJA,² and the SPLC³ are concerned about the state of freedom of expression, including freedom of the press, at Haskell Indian Nations University (HINU) in light of your recent directive sent to Jared Nally, editor-in-chief of *The Indian Leader*, HINU's student newspaper. Your directive forbids Nally from carrying on normal journalistic activities, such as requesting information from government agencies, recording interviews, and criticizing members of the HINU community.

Your directive violates the First Amendment and HINU's obligations under a September 1989 settlement agreement with *The Indian Leader*. HINU must immediately rescind the directive,

¹ 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 The Native American Journalists Association (NAJA) serves and empowers Native journalists through programs and actions designed to enrich journalism and promote Native cultures. NAJA recognizes Native Americans as distinct peoples based on tradition and culture. In this spirit, NAJA educates and unifies its membership through journalism programs that promote diversity and defends challenges to free press, speech, and expression. NAJA is committed to increasing the representation of Native journalists in mainstream media. NAJA encourages both mainstream and tribal media to attain the highest standards of professionalism, ethics and responsibility.

³ Founded in 1974, the Student Press Law Center (SPLC) is the nation's only legal assistance agency devoted exclusively to supporting, defending, and educating high school and college journalists about the rights and responsibilities embodied in the First Amendment and supporting the student news media in covering important issues free from censorship. The SPLC is a nonpartisan, nonprofit organization.

restore the *Leader's* rights to university resources and access to its bank account, and clarify that HINU will not interfere in the affairs of the student newspaper or impede the free expression rights of individual students in the future.

I. HINU Threatens Student Journalist with Disciplinary Sanctions

The following is our understanding of the pertinent facts. We appreciate that you may have additional information to offer and invite you to share it with us. Please find enclosed an executed waiver and request for FERPA records authorizing and requesting that you share Jared Nally's student file with FIRE.

A. *Nally raises questions about HINU's reporting of student data to the Census.*

In March, Nally began raising questions about how HINU reports student data to the U.S. Census Bureau.⁴ Nally was initially concerned that HINU had not submitted census data on behalf of its students.⁵ In addition to raising his personal concerns, Nally wrote an article for *The Leader* discussing HINU's institutional response to the Census on behalf of students.⁶

In late August, Nally discovered HINU had submitted student data to the Census but had not asked students to self-report racial or gender identities to be reported to the Census.⁷ At this point, Nally became concerned that HINU had engaged in discrimination against biracial students by reporting all students as "Native American," regardless of their personal identities.⁸

As part of his concerns about whether and how HINU had reported student census data, Nally lodged concerns about Tonia Salvini, HINU's Vice President of University Services, with the Community Police Review Board (CPRB) of the City of Lawrence, on which Salvini sits.⁹ Nally initially raised his concerns with the CPRB via public comments during CPRB meetings and lodged an official ethics complaint concerning Salvini on October 9.¹⁰

Also on October 9, Nally submitted a grievance to your office regarding his concerns about HINU's handling of the Census and reporting of student racial identities in the future.¹¹

⁴ Email from Nally to Ernie Wilson, Acting Supervisor: College Resident Assistant, HINU, and Tonia Salvini, Vice Pres. of Univ. Services, HINU (Mar. 24, 2020) (on file with author); *see also* letter from Nally to Salvini (Aug. 28, 2020) (on file with author).

⁵ *Id.*

⁶ Jared Nally, *2020 Census*, INDIAN LEADER, Apr. 13, 2020, <http://www.theindianleader.com/2020/04/13/2020-census>.

⁷ Letter from Nally, *supra* note 1.

⁸ *Id.*

⁹ *Id.*

¹⁰ Letter from Nally to CPRB (Oct. 9, 2020) (on file with author).

¹¹ Letter from Nally to Graham (Oct. 9, 2020) (on file with author).

B. Nally legally records an HINU administrator without her knowledge.

In July, when HINU announced its student fees would increase, Nally called financial aid coordinator Carlene Morris to inquire about his own financial aid situation and to gather more information about the change.¹² Nally recorded his conversation with Morris without seeking her permission, as is allowed under Kansas law.¹³ Nally later used this recording in an opinions article regarding the fee change.¹⁴

C. The Leader objects to an administratively-appointed faculty adviser.

In July, the *Leader's* faculty adviser, Rhonda LeValdo, informed the publication staff that because HINU's administration was requiring that faculty cease their roles as student organization advisers, she would no longer be able to serve as faculty adviser.¹⁵ In LeValdo's stead, your predecessor appointed Interim Dean of Humanities Joshua Falleaf to advise the student newspaper.¹⁶

Concerned that the appointment of an administrator as an adviser would imperil their right to engage as members of a free, independent student press, the *Leader's* officers unanimously voted to remove Falleaf as faculty adviser.¹⁷ While it is not clear the *Leader's* officers had the right to remove a faculty adviser at the time of the vote to remove Falleaf, the student officers were concerned that advisory oversight from an administrator would ultimately lead to violations of their First Amendment rights and the 1989 Agreement, which prohibits agents of the university from "inhibiting the free expression of members of" the *Leader*.¹⁸

On August 27, per its rights under the 1989 Agreement to alter its Plan of Operation,¹⁹ the *Leader* altered its Plan of Operation for the 2020-21 school year (the 2020-21 Plan), implementing a new procedure for HINU's appointment of faculty advisers.²⁰ The 2020-21

¹² See Jared Nally, *It's Not Just \$475*, INDIAN LEADER, July 10, 2020, <http://www.theindianleader.com/2020/07/10/its-not-just-475>.

¹³ See KAN. STAT. ANN. § 21-6101(a)(1).

¹⁴ Nally, *supra* note 12.

¹⁵ Email from Nally to Joshua Falleaf, Interim Dean of Humanities, HINU, Jul. 29, 2020 (on file with author); email from Jim Rains to Rhonda LeValdo and Nally (July 31, 2020) (on file with author).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*; Letter from Nally to Jim Rains, Acting Vice President of Academics, HINU (Aug. 3, 2020) (on file with author). See Settlement Agreement between HINU Indian Junior College of the Bureau of Indian Affairs and the Indian Leader Association (Sept. 19, 1989) (on file with author).

¹⁹ Settlement Agreement, *supra* note 18 ("HINU agrees that no officer, agent, instructor, or employee shall . . . refuse to approve a Plan of Operation for [the *Leader*] substantially similar to the attached Plan. . . . [N]othing in this Settlement Agreement is intended to prevent members of *The Indian Leader Association* from adopting a Plan of Operation . . . substantially dissimilar to the attached Plan").

²⁰ The Indian Leader Association 2020-2021 Plan of Operations, THE INDIAN LEADER ASSOCIATION, <http://www.theindianleader.com/wp-content/uploads/2020/09/2020-2021-Plan-of-Operations.pdf> (last visited Oct. 20, 2020).

Plan provides that the *Leader* will nominate advisers, which will then be appointed by HINU.²¹ Further, the 2020-21 Plan provides for removal of a faculty adviser by petition by a majority vote of the *Leader* officers.²²

D. Nally pursues a story by requesting information from local government.

In October, when a food service employee of HINU died, Nally began gathering information about her death in order to report it in the *Leader*.²³ As part of this investigation, Nally reached out to the local police for any information they might have regarding the death.²⁴ In his email to the Lawrence Police Department, Nally accurately identified himself as “a student writer for *The Indian Leader*.”²⁵ A copy of Nally’s email is enclosed for reference.

E. You send an October 16 “directive” to Nally.

On October 16, you sent Nally a written memo, styled as a “directive,” reciting a variety of grievances about his reporting and criticism of HINU administrators, and threatening him with “disciplinary action” for failing to show students, staff, and “officials” the “appropriate respect.”²⁶ A copy of your October 16 “directive” is enclosed.

In particular, the “directive” accuses Nally of:

- “routinely attack[ing] HINU employees” by writing letters and speaking in public;
- “demanding information” while holding himself out as editor of the *Leader*;
- advocating for the removal of Falleaf as the *Leader* adviser; and
- recording his call with Morris, which would “[i]n many states . . . be considered a felony[.]”²⁷

²¹ *Id.*

²² *Id.*

²³ See Jared Nally, *Curtis Worker Nia Schexnider Passes On*, THE INDIAN LEADER, Oct. 9, 2020, <http://www.theindianleader.com/2020/10/09/curtis-worker-nia-schexnider-passes-on>.

²⁴ Email from Nally to the Lawrence Police Department (Oct. 5, 2020) (on file with author).

²⁵ *Id.*

²⁶ Letter from Graham to Nally (Oct. 16, 2020) (on file with author).

²⁷ While this is an accurate statement regarding the law of *other states*, your directive failed to mention the fact that Kansas follows a one-party consent rule. That is, so long as a single party to a private conversation (here, Nally) consents to the recording thereof, the recording is absolutely legal and valid. KAN. STAT. ANN. § 21-6101(a)(1).

After warning Nally that disciplinary consequences could follow his non-compliance, your “directive” specifically instructs Nally that he “WILL” treat “all faculty members, staff, and students with the highest respect,” and:

You will NOT:

- Attack any student, faculty, or staff member with letters or in public, or any public forum, thus bringing unjustified liability to this campus or anyone on this campus,
- Make demands on any governmental agency – or anyone else from HINU – while claiming to represent *The Indian Leader*.
- Attempt countermanding decisions of HINU personnel assigned by me or anyone else to positions in an effort to replace them,
- Record anyone at HINU in your interview unless you advise them first and they grant you permission.

Around the same time as your “directive” to Nally, the *Leader* faced significant difficulty renewing its status as an officially recognized²⁸ organization for the 2020-21 school year. In years past, the *Leader* has completed an annual recognition process by submitting its annual Plan of Operations and minutes from its first meeting to the Student Bank. Following this submission, the Student Bank has typically provided a signature card to be completed by elected officers and students’ chosen faculty adviser.

Following its implementation of the 2020-21 Plan, on September 10, the *Leader* submitted this and its first meeting minutes to the Student Bank, which controls the disbursement of student funds to recognized student organizations.²⁹ Unlike in previous years, the *Leader* has not heard back from the Student Bank, despite multiple attempts to get in contact.³⁰ During this time, the *Leader* has also been unable to ascertain the balance of its account with the Student Bank³¹ and has yet to be formally assigned an adviser for the 2020-21 school year, despite its nomination of its previous adviser, LeValdo.

II. Your “Directive” Violates the First Amendment Rights of Nally and the *Leader*

It has long been settled law that the First Amendment is binding on public colleges like HINU. *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

²⁸ We understand that HINU refers to its official student organization recognition process as “sanctioning.” We refer to it as “recognition” throughout this correspondence, as most institutions of higher education do, for the sake of distinguishing between recognizing the *Leader* and HINU’s unlawful threats to impose disciplinary sanctions on its editor.

²⁹ Email from Nally to Jeri Sledd, Student Bank Manager, HINU (Sept. 10, 2020) (on file with author).

³⁰ *See id.*; email from Nally to Sledd (Oct. 19, 2020) (on file with author).

³¹ Oct. 19 email, *supra* note 30.

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). Indeed, the 1989 settlement agreement—which you concede is a binding agreement³²—obligates Haskell Indian Nations University in particular to protect the First Amendment rights of the student publishers of the *Leader*.

A. The actions identified in your “directive” are protected speech.

Your directive to Nally threatens to punish him for engaging in normal journalistic activity, violating the expressive rights of both Nally and the publication that he leads.

i. Criticism of university officials is constitutionally-protected speech.

Your first demand is that Nally abstain from “[a]ttack[ing] any student, faculty, or staff member . . . [in] any public forum.” Based on your description earlier in the “directive” of what constitutes an “attack”—namely, criticizing the actions of campus officials by lodging written and oral complaints—it is clear that your “directive” contemplates disciplinary action for a broad range of journalistic and expressive activity protected by the First Amendment.

Not only is criticism often a part of journalism, criticism of government officials—and, to be clear, as administrators of a public institution, HINU administrators are such officials—is at the core of the First Amendment’s protection. “[I]t is a prized American privilege to speak one’s mind, although not always with perfect good taste, on all public institutions.” *Bridges v. California*, 314 U.S. 252, 270 (1941). So central is this ability to criticize officials that the Supreme Court, affirming that “debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp **attacks** on government and public officials,” determined that a higher standard of fault applies to speech-related torts where a public official is the plaintiff. *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964) (emphasis added).

This right to criticize applies both to the press and to individuals. In other words, Nally retains a right to “attack”—as both you and the Supreme Court put it—HINU administrators both as a journalist, such as by writing a story for the *Leader*, and as an individual, such as by writing a letter to your superior or offering public comment at a government meeting. Because Nally’s right to criticize is protected by the First Amendment, you may not punish him for doing so. Your “directive” expressly threatens to do so.

The First Amendment right to criticize and engage with government officials, such as administrators at a public university or officials at the local police department, also protects Nally’s ability to “[m]ake demands on any governmental agency” and “[a]ttempt countermanding decisions of HINU personnel,” activities to which you expressed displeasure in your directive. These activities, in addition to being protected by the First Amendment

³² Letter from Graham, *supra* note 26.

rights of free speech and free press, are also protected by the “cognate right” to petition the government. *Thomas v. Collins*, 323 U.S. 516, 530 (1945).

This right includes actions that you refer to as “[a]tttempt[ing to] countermand[] decisions of HINU personnel”—that is, expressing displeasure in HINU’s choice of faculty adviser for the *Leader* and attempting to take action to secure a different adviser. “The right to petition allows citizens to express their ideas, hopes, and concerns to their government and their elected representatives[.]” *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 388 (2011). This includes Nally and the *Leader*’s right to express concerns with their appointed adviser, and, in fact, to demand a different faculty adviser be appointed. Nothing in this right requires individuals to *only* express their ideas to government officials when their ideas align with those of the officials whom they contact.

This right also encompasses “request[ing] action by the government,” *id.* at 388–89, protecting Nally’s right to “[m]ake demands of” government agents. This shields Nally’s right to request information and records from HINU, the local police department, or any other government agency. Further, Nally and the *Leader*’s right to request records from government agencies is not only protected by the First Amendment but also by Kansas law. In Kansas, “[a]ll public records shall be open for inspection by any person,” with some exceptions. Kan. Stat. Ann. § 45-218(a). It necessarily follows that coupled with this right to inspect records is a corollary right to *request* their inspection.

ii. Kansas law allows recording of private conversations with the consent of only one party.

The First Amendment not only protects the spoken and written word, but encompasses the “act of making an audio or audiovisual recording” as a necessary “corollary of the right to disseminate the resulting recording.” *Am Civil Liberties Union of Ill. v. Alvarez*, 679 F.3d 583, 595–96 (7th Cir. 2012). “The right to publish or broadcast an audio or audiovisual recording would be insecure, or largely ineffective, if the antecedent act of making the recording is wholly unprotected.” *Id.* This includes the act of “nonconsensual audio recording.” *Id.* at 596–97. Accordingly, federal courts of appeal have long recognized a right to receive and record information, including a right to record matters of public interest. *See, e.g., Forcyde v. City of Seattle*, 55 F.3d 436, 439 (9th Cir. 1995) (discussing a “First Amendment right to film matters of public interest”); *Gilk v. Cunniffe*, 655 F.3d 78, 85 (1st Cir. 2011) (although “not unqualified, a citizen’s right to film government officials . . . in the discharge of their duties in a public duties in a public space is a basic, vital, and well-established liberty safeguarded by the First Amendment”).

The right to record government actors is perhaps at its highest importance when connected to the right of the press to gather information. *See Branzburg v. Hayes*, 408 U.S. 655, 681 (1972). The press, including the student press, serves as an important conduit in preserving the public’s right to know. Courts recognize that the press act as “surrogates for the public” in keeping a watchful eye on their communities, and especially on the actions of government

agents, such as those acting on behalf of public colleges and universities. *Richmond Newspapers v. Virginia*, 448 U.S. 555, 573 (1980).

While the right to record is qualified in some states by privacy statutes requiring the consent to record from all parties to a conversation,³³ the right is not so qualified in Kansas—a fact your “directive” implicitly recognizes by invoking the laws of *other* states as rendering such recordings potential felonies. Under the law of Kansas—the state in which HINU sits—it is a crime to record a telephone call “without the consent of the sender or receiver.” Kan. Stat. Ann. § 21-6101(a)(1).³⁴ In the situation with Morris, Nally initiated the telephone call and had the right to record it without Morris’ consent. Because his actions in recording HINU officials are protected by the First Amendment and Kansas law, you may not punish him for participating in legal newsgathering techniques.³⁵

B. Threatening retaliation against Nally or the Leader for their free expression violates the First Amendment.

It is well-established that public institutions of higher education “may not constitutionally take adverse action against a student newspaper, such as withdrawing or reducing the paper’s funding, because it disapproves of the content of the paper.” *Stanley v. Magrath*, 719 F.2d 279, 282 (8th Cir. 1983); *see also Rosenberger v. Rector and Visitors of the Univ. of Va.*, 515 U.S. 819, 829–30 (1995). The United States Court of Appeals for the Second Circuit has expanded on this concept to explain:

[A]t a minimum, when a public university establishes a student media outlet and requires no initial restrictions on content, it may not censor, retaliate, or otherwise chill that outlet’s speech, or the speech of the student journalists who produce it, on the basis of content or viewpoints expressed through that outlet.

Husain v. Springer, 494 F.3d 108, 124 (2d Cir. 2007).

It is equally true that retaliation against *any actor*—whether an individual student or the campus paper—for participating in First Amendment-protected activity is unconstitutional. Where a government actor responds to protected speech with an “adverse action” that would “chill a person of ordinary firmness from continuing in the activity,” it has engaged in impermissible retaliation. *Revels v. Vincenz*, 382 F.3d 876 (8th Cir. 2004). This “well established” test does not require a “great” deal of discipline in order to be “actionable,” and the “objective” test asks “not whether the plaintiff herself was deterred” from speaking but

³³ For a state-by-state discussion of recording statutes, *see Reporters’ Recording Guide*, Reporters Committee for Freedom of the Press, <https://www.rcfp.org/reporters-recording-guide> (last visited Oct. 21, 2020).

³⁴ The Kansas Supreme Court has interpreted the state’s recording statute as enjoining “only interceptions without the consent of *either* the sender *or* the receiver.” *State v. Roudybush*, 235 Kan. 834, 842 (1984).

³⁵ Even assuming that HINU, a federally-operated institution, could impose a more restrictive standard, it has not done so and may not do so retroactively. Further, federal law permits a party to a call to record that call. 18 U.S.C. § 2511(2)(d).

whether a reasonable person may be so deterred. *Garcia v. City of Trenton*, 348 F.3d 726, 728–29 (8th Cir. 2003).

Here, HINU has taken two adverse actions: First, it has threatened disciplinary action against Nally if he continues to engage in your enumerated list of First Amendment-protected activities. Second, it has retaliated against the *Leader* by refusing to complete the normal recognition process, thereby denying the *Leader*’s access to its bank account and other resources. Each of these actions, individually, is enough to “chill a person of ordinary firmness” from continuing to engage in protected speech that HINU administrators find objectionable.

While Nally appears to be an exceptionally resilient individual and has continued to self-advocate despite HINU’s actions and threats, the chilling effect is nonetheless borne out here in the reasonable apprehension Nally feels about engaging in normal activities on behalf of the *Leader* in his role as its editor-in chief. For example, after receiving your directive, Nally was nervous to once again prod the Student Bank to ask about the *Leader*’s account balance, worried that doing so might result in discipline. This result is untenable and cannot be squared with HINU’s obligations as a public institution bound to uphold the First Amendment.

C. Threatening to punish a student journalist for engaging in journalistic activities violates the 1989 Agreement.

In the 1989 Agreement, HINU, then Haskell Indian Junior College of the Bureau of Indian Affairs, agreed to allow students to retain full editorial control over the *Leader*. This includes the right of the *Leader* to access its monies in its Student Bank account, as well as its right to engage in journalistic pursuits free from censorship.

While the 1989 Agreement does not explicitly forbid HINU from punishing students for their protected journalistic activities, it does forbid HINU from “otherwise inhibit[ing] the free expression of members of [the *Leader*] in violation of the First Amendment[.]”³⁶ As outlined here, your directive and HINU’s refusal to follow the usual sanctioning processes for the *Leader* violate the First Amendment, and thereby also violate the 1989 agreement.

III. HINU Must Rescind the “Directive” and Immediately Recognize the *Leader*

Your “directive” to Nally is an appalling and unequivocal departure from the First Amendment, betraying willful blindness to the basic concepts of constitutional rights. A public college administrator who violates clearly established law will not retain qualified immunity and can be held personally responsible for monetary damages for violating First Amendment rights under 42 U.S.C. § 1983. *See Harlow v. Fitzgerald*, 457 U.S. 800 (1982). Citing—in the course of violating students’ expressive rights—a settlement agreement

³⁶ Settlement Agreement, *supra* note 18.

obligating you to respect the First Amendment is a stark illustration of a “reckless or callous indifference to the federally protected rights of others.” *Smith v. Wade*, 461 U.S. 30, 56 (1983).

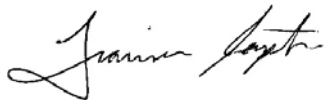
Given the urgent nature of this matter, we request receipt of a response to this letter no later than the close of business on November 2, 2020.

Sincerely,

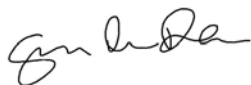


Lindsie Rank
Program Officer

Individual Rights Defense Program, Foundation for Individual Rights in Education



Francine Compton
President
Native American Journalists Association



Sommer Ingram Dean
Staff Attorney
Student Press Law Center

Encl.

Authorization and Waiver for Release of Personal Information and Request for FERPA Records

This is an authorization for the release of records and information, as well as a request for records, under the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and its applicable regulations (particularly 34 CFR § 99.30).

I, Jared Eugene Nally, born on 05/05/1993, do hereby authorize Haskell Indian Nations University (the "Institution") to release to the Foundation for Individual Rights in Education ("FIRE") any and all information concerning my current status, disciplinary records, or other student records maintained by the Institution, including records which are otherwise protected from disclosure under the Family Educational Rights and Privacy Act of 1974. I further authorize the Institution to engage FIRE's staff members in a full discussion of all matters pertaining to my status as a student, disciplinary records, records maintained by the Institution, or my relationship with the Institution, and, in so doing, to fully disclose all relevant information. The purpose of this waiver is to provide information concerning a dispute in which I am involved.

I have reached or passed 18 years of age or I am attending an institution of postsecondary education.

In waiving such protections, I am complying with the instructions to specify the records that may be disclosed, state the purpose of the disclosure, and identify the party or class of parties to whom disclosure may be made, as provided by 34 CFR 99.30(b)(3) under the authority of 20 U.S.C. § 1232g(b)(2)(A).

Records requested under FERPA: I request access to and a copy of all documents defined as my "education records" under 34 CFR § 99.3, including without limitation:

- A complete copy of any files kept in my name in any and all university offices;
- any emails, notes, memoranda, video, audio, or other material maintained by any school employee in which I am personally identifiable;
- any and all phone, medical or other records in which I am personally identifiable; and
- the log of requests for and disclosures of my education records, as required by 34 CFR § 99.32(a).

- Fees:** I agree to pay any reasonable copying and postage fees of not more than \$20. If the cost would be greater than this amount, please notify me. Bear in mind, however, that FERPA prohibits the imposition of a fee to search or retrieve records (34 CFR § 99.11).

Request for Redaction Log: If any portion of responsive documents must be redacted, please provide a written explanation for the redaction including a reference to the statutory exemption permitting such redaction. Additionally, please provide all segregable parts of redacted materials.

I request that the records be sent to me via email at [REDACTED] and to FOIA@thefire.org.

This authorization and waiver does not extend to or authorize the release of any information or records to any entity or person other than the Foundation for Individual Rights in Education, and I understand that I may withdraw this authorization in writing at any time. I further understand that my execution of this waiver and release does not, on its own or in connection with any other communications or activity, serve to establish an attorney-client relationship with FIRE.

I also hereby consent that FIRE may disclose information obtained as a result of this authorization and waiver, but only the information that I authorize.

DocuSigned by:

81C2B4531DAF45F...
Student's Signature

10/23/2020

Date



HASKELL INDIAN NATIONS UNIVERSITY

Office of the President
155 Indian Avenue
Lawrence, Kansas 66046-4800
www.haskell.edu

Memorandum

Date: October 16, 2020

To: Jared Nally

From: Dr. Ronald Graham, President

Subject: **Directive**

Jared, I work directly with the Lawrence community at several different levels (i.e., the Mayor and City Manager's Office, Lawrence Police Department, the Chamber of Commerce, and the Rotary). My intention is to build relationships, identify training and internships, work with the community on their projects as a representative from Haskell, and create opportunities for Haskell students. Your name has been identified recently, and on more than one occasion, as someone who routinely attacks Haskell employees with letters; recently, you attacked a Haskell official during a community event. Further, you have been identified as calling the police department and demanding information regarding a deceased Haskell employee while representing yourself as an editor for *The Indian Leader*. Under no circumstances do you have the authority to contact the police department (or any other governmental agency) and demand anything on behalf of the University. Your behavior has discredited you and this university. You have compromised your credibility within the community and, more importantly, you have brought yourself, *The Indian Leader*, Haskell, and me unwarranted attention.

Earlier this summer, Josh Falleaf was assigned as the Faculty Advisor by Dr. Rains, the University's Acting Vice President of Academic Affairs, to advise *The Indian Leader* staff pursuant to University guidelines. You took it upon yourself to attempt to remove him from this position per your letter dated August 3, 2020. Mr. Falleaf was placed in an Acting Dean's position by me; however, he is first and foremost a Haskell Instructor. In that, he is appropriately qualified to serve as the University's appointed Faculty Advisor to *The Indian Leader*. Neither you nor any member of *The Indian Leader* staff has the authority to "vote out" the University-appointed Faculty Advisor; appointing the Faculty Advisor is the exclusive right of the University and it is in accordance with the 1989 court settlement. You are a student at this University; you are not entitled to reverse Executive-level decisions. Furthermore, you essentially called Dr. Rains a liar in your email (referring to Mr. Falleaf's assignment), which violates Student Conduct.

You also chose to talk to yet another university official, Ms. Carlene Morris, and to record her conversation with you surreptitiously – and without her permission. This action resulted in yet another complaint against you. In many states, this would be considered a felony. You invoked Kansas law to justify disrespectful behavior toward a university official. In the future, I strongly advise that you – out of respect, honesty, and journalistic codes of ethical conduct -- obtain permission from anyone from whom you seek to solicit information for your paper – especially information that is freely available to Haskell students.

I will remind you that you are a student first and foremost on this campus, and your conduct falls under the umbrella of the Student Conduct Code. Your role on *The Indian Leader* does not absolve you from your responsibilities as a Haskell student – and as a representative of our community. Henceforth, you will conduct yourself in accordance with the Haskell Student Code of Conduct -- now and in the future; and you will treat fellow students, University staff, and University officials with appropriate respect. Failure to do so, may result in disciplinary action.

Let me make myself clear. You are being directed, as a Haskell student. To comply with the following:

You will NOT:

- Attack any student, faculty, or staff member with letters or in public, or any public forum, thus bringing unjustified liability to this campus or anyone on this campus,
- Make demands on any governmental agency -- or anyone else from Haskell -- while claiming to represent *The Indian Leader*.
- Attempt countermanding decisions of Haskell personnel assigned by me or anyone else to positions in an effort to replace them,
- Record anyone at Haskell in your interviews unless you advise them first and they grant you permission.

You WILL:

- Treat all faculty members, staff, and students with the highest respect.
- Conduct yourself as a student under the umbrella of Code of Conduct.
- Understand that no one has the obligation to answer your questions or adhere to any timelines you may attempt to impose on them.

Lastly, Haskell is not obligated to report any census. If you wish to be counted differently, I strongly suggest that you do what many of us do: contact the US. Census Bureau and file an individual report.

Cc: BIE Legal

Tony Dearman
Director of BIE



Jared Nally

Media Inquiry - The Indian Leader

2 messages

Jared Nally

Mon, Oct 5, 9:13 AM

To: <lpdmedia@lkpd.org>

I'm reaching out the the Lawrence Police Department as a student writer for The Indian Leader, Haskell Indian Nations University's student newspaper. I'm wanting to get confirmation and information on the death of Neeoni Chex to provide our community with a proper death notice. She was a community pilar and I would appreciate any information you could provide.

She would have died sometime yesterday, October 4, before 4:00 PM CST. Please let me know if LPD can confirm her death, cause of death, and provide a funeral home if possible.

Thank You,
-Jared Nally, Editor-In-Chief

Patrick S. Compton <pscompton@lkpd.org>

Mon, Oct 5, 3:24 PM

To: Jared Nally

Jared,

Jared,

Thank you for inquiry.

My apologies, but we do not generally do police records searches by name. Do you have any other information on the location (Was it in Lawrence?), or circumstances of her death?

Best,

Patrick

Patrick Compton
Public Affairs
Lawrence, Kansas Police Department
4820 Bob Billings Parkway
Lawrence, KS 66049
(785) 830-7409
pscompton@lkpd.org
<https://www.facebook.com/LawrencePolice>
https://twitter.com/lawrenceks_pd
[Quoted text hidden]

Jan. 13, 2021

**Department of Interior, Division of Indian Affairs'
Jennifer Segal Wiginton email to FIRE**



Lindsie Rank <lindsie.rank@thefire.org>

Letter from FIRE, NAJA, and SPLC, Oct. 26, 2020

Wiginton, Jennifer S <jennifer.wiginton@sol.doi.gov>

Wed, Jan 13, 2021 at 3:34 PM

To: "lindsie.rank@thefire.org" <lindsie.rank@thefire.org>, [REDACTED]

Cc: "Graham, Ronald J" <RONALD.GRAHAM@bie.edu>, "Ennis, Samuel E" <samuel.ennis@sol.doi.gov>

Good afternoon,

Please find attached a letter from the Haskell Indian Nations University. Dr. Graham signed and intended to transmit the letter on November 20, 2020. However, we just discovered that due to an administrative error, the letter had not been sent to you. We apologize for any resulting inconvenience. We request that you please provide a copy of the letter to Mr. Nally.

Jennifer Segal Wiginton
Bureau of Indian Education Team Lead
Division of Indian Affairs
Office of the Solicitor
(202) 208-5498

From: Lindsie Rank <lindsie.rank@thefire.org>

Sent: Monday, October 26, 2020 11:13 AM

To: Graham, Ronald J <RONALD.GRAHAM@BIE.EDU>

Cc: Francine Compton [REDACTED]; Bryan Pollard [REDACTED] Sommer Ingram
Dean [REDACTED]

Subject: [EXTERNAL] Letter from FIRE, NAJA, and SPLC, Oct. 26, 2020

<p>This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.</p>
--

[Quoted text hidden]

2020.11.20 Signed Response Lte to FIRE.pdf
55K

Undated

HINU President Dr. Ronald Graham letter to FIRE



HASKELL INDIAN NATIONS UNIVERSITY

Office of the President
155 Indian Avenue
Lawrence, Kansas 66046-4800
www.haskell.edu

Dear Mr. Nally,

I am writing in response to a letter from FIRE, dated October 26, 2020, requesting I rescind the memorandum I directed to you on October 16, 2020. I hereby rescind the October 16 memorandum, including the directives contained therein.

The October 16 letter originated because of Haskell staff members' concerns and complaints regarding certain methods employed to obtain information. They perceived these methods to be needlessly aggressive and, at times, deceitful. However, I acknowledge that we took an incorrect approach to address those concerns through the issuance of the October 16 memorandum. Accordingly, I commit that Haskell will not interfere in the affairs of the Indian Leader or impede the free expression rights of individual students at Haskell.

I instructed my staff to review the status of the Leader's annual recognition process to ensure continued access by the Leader to its Student Bank account and Haskell resources.

Sincerely,

A handwritten signature in black ink, appearing to read "Dr. Ronald Graham". The signature is stylized with a large, looped initial "D" and a long horizontal stroke.

Dr. Ronald Graham, President

Cc: Lindsie Rank, FIRE

Francine Compton, Native American Journalists Association
Sommer Ingram Dean, Student Press Law Center
Tony Dearman, BIE Director

Jan. 19, 2021
FIRE letter to HINU



January 19, 2021

Dr. Ronald Graham
Haskell Indian Nations University
Office of the President
Navarre Hall
155 Indian Ave
Lawrence, Kansas 66046-4800

Sent via Electronic Mail (ronald.graham@bie.edu)

Dear President Graham:

On January 14, FIRE,¹ NAJA,² and the SPLC³ received an email from Jennifer Wiginton of the Bureau of Indian Education (BIE) notifying us that your directive of October 16, 2020, was rescinded and attaching a letter from you, addressed to Jared Nally, to that effect. While Wiginton asserted that you had intended to send this letter on November 20, the letter was itself undated, and the letter's metadata reveals that it was last edited after that date. It would appear that this letter was only belatedly sent to us and to Nally last week as a result of the BIE's investigation into your directive.

Rescission of your unconstitutional directive of October 16, 2020—which barred Jared Nally, editor-in-chief of *The Indian Leader*, from engaging in basic newsgathering and expressive activities protected by the First Amendment—was appropriate. While it is important that *The Indian Leader* may now do its work without the chill of censorship hanging over it, your

¹ 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 The Native American Journalists Association (NAJA) serves and empowers Native journalists through programs and actions designed to enrich journalism and promote Native cultures. NAJA recognizes Native Americans as distinct peoples based on tradition and culture. In this spirit, NAJA educates and unifies its membership through journalism programs that promote diversity and defends challenges to free press, speech, and expression. NAJA is committed to increasing the representation of Native journalists in mainstream media. NAJA encourages both mainstream and tribal media to attain the highest standards of professionalism, ethics and responsibility.

³ Founded in 1974, the Student Press Law Center (SPLC) is the nation's only legal assistance agency devoted exclusively to supporting, defending, and educating high school and college journalists about the rights and responsibilities embodied in the First Amendment and supporting the student news media in covering important issues free from censorship. The SPLC is a nonpartisan, nonprofit organization.

administration's inexcusable and unexplained delay evidences continuing negligence in protecting your students' First Amendment rights. As a result, serious concerns remain about the state of freedom of speech and of the press at Haskell Indian Nations University (HINU). To that end, we request that HINU take further actions to revise its student code of conduct to comport with the First Amendment and notify students of these changes.

Three organizations concerned with students' rights wrote a letter to you on October 26, 2020, seeking your urgent attention and calling for an "immediate" rescission of a patently unconstitutional directive to a student journalist. At best, your intended response—accepting as true the BIE's representations that your undated letter was intended to be sent on November 20—would have come some thirty-five days after your October 16 order that Nally cease exercising his First Amendment rights. As it stands, that rescission was not communicated to Nally until eighty-nine days after the October 16 order.

It is absolutely inappropriate and inexcusable that it took HINU three months to rescind a directive that was unconstitutional from day one, regardless of the reason for the delay. For three months, your directive caused Nally and *The Leader* uncertainty as to their fundamental First Amendment rights, causing serious injury to their constitutional rights. This violated both the First Amendment and *The Leader's* 1989 settlement agreement with the university.⁴ While we appreciate that you and your leadership team have taken some belated steps to countermand your directive, further action must be taken to make these students—and all students at HINU—whole.

This is especially true given that, in addition to being a flagrant violation of the First Amendment, your directive also represented a departure from HINU's usual student conduct process.⁵ Despite the process for adjudicating student conduct violations laid out in HINU's student handbook,⁶ Nally did not receive fair notice that he was being accused of violating university policy, nor did he receive a hearing or other opportunity to be heard. Instead, Nally was subject to only a unilateral—and unconstitutional—diktat, imposing penalties on Nally and *The Leader* for three months without any due process.

Unfortunately, this complete disregard for Nally's rights appears consistent with HINU's worrying lack of concern for student rights in general. This is further evidenced by HINU's Student Rights Office web page, which continues to read, "Lorem ipsum dolor sit amet, consectetur adipiscing elit, sed diam nonummy nibh euismod tincidunt ut laoreet dolore magna aliquam erat volutpat"—three months after FIRE, NAJA, and SPLC first alerted you of this oversight in our letter of October 26, 2020. Additionally, HINU does not make any

⁴ Settlement Agreement between HINU Indian Junior College of the Bureau of Indian Affairs and the Indian Leader Association (Sept. 19, 1989) (on file with author).

⁵ See Haskell Indian Nations University Student Handbook Code of Conduct at 23–35, *available at* <https://haskell.edu/wp-content/uploads/2017/01/Haskell-CSC-Table-of-Contents-7-22-16.pdf> (last visited Jan. 15, 2021).

⁶ *Id.*

student handbook available on its website, leaving students in the dark as to their rights and responsibilities.⁷

Of particular concern are HINU's "CIRCLE" values, which restrict student expression rights at HINU.⁸ CIRCLE, an acronym ("Communication, Integrity, Respect, Collaboration, Leadership, and Excellence"),⁹ presents laudable goals, but HINU cannot mandate these goals without departing from its obligations under the First Amendment.

For example, a government entity cannot mandate that individuals be respectful or demonstrate integrity in their expression. This is because the First Amendment, distilled to its most fundamental concepts, is intended to protect expression when it is controversial or upsetting to others, might be seen as disrespectful, or even might be seen to fully lack integrity. The Supreme Court has repeatedly, consistently, and clearly held that expression may not be restricted merely because some, many, or even most find it to be offensive or rude. This core First Amendment principle is why the authorities cannot ban the burning of the American flag,¹⁰ prohibit the wearing of a jacket emblazoned with the words "Fuck the Draft,"¹¹ penalize satirical advertisements describing a pastor losing his virginity to his mother in an outhouse,¹² or disperse civil rights marchers out of fear that "muttering" and "grumbling" white onlookers might lead to violence.¹³ In ruling that the First Amendment protects protesters holding signs outside of soldiers' funerals (including signs that read "Thank God for Dead Soldiers," "Thank God for IEDs," and "Fags Doom Nations"), the Court reiterated this fundamental principle, remarking that "[a]s a Nation we have chosen . . . to protect even hurtful speech on public issues to ensure that we do not stifle public debate."¹⁴

This principle does not lose its salience in the context of the public university. To the contrary, a commitment to expressive rights must be robust and uncompromising if students and faculty are to be free to engage in debate and discussion about the issues of the day in pursuit of advanced knowledge and understanding. This dialogue may encompass speech that shows disrespect or offends. For example, the Supreme Court upheld as protected speech a student newspaper's use of a vulgar headline ("Motherfucker Acquitted") and a front-page "political cartoon . . . depicting policemen raping the Statue of Liberty and the Goddess of Justice."¹⁵

⁷ Only by using Google to search for "Haskell Indian Nations Handbook" can one find outdated codes of conduct from 2012, 2015, and 2016. Because it is the most recent student handbook either FIRE or Nally could locate, this letter will reference HINU's 2016 Student Handbook and Code of Conduct.

⁸ "Discussion and expression of all views is permitted, consistent with Haskell's CIRCLE values . . ." Handbook, *supra* note 5, at 11.

⁹ *Id.* at 6-7.

¹⁰ *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (burning the American flag was protected by the First Amendment, the "bedrock principle underlying" the holding being that government actors "may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable").

¹¹ *Cohen v. California*, 403 U.S. 15, 25 (1971).

¹² *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 50 (1988).

¹³ *Cox v. Louisiana*, 379 U.S. 536, 557 (1965).

¹⁴ *Snyder v. Phelps*, 562 U.S. 443, 448, 461 (2011).

¹⁵ *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 667-68 (1973).

There is no doubt that many found these images deeply disrespectful at a time of political polarization and civil unrest, yet “the mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of ‘conventions of decency.’”¹⁶

Further, your directive indicated that you believe criticism of government officials—such as HINU administrators—to be disrespectful, and thus in contravention of HINU’s CIRCLE policy. However, again, the Supreme Court has specifically held that constitutionally-protected public debate “may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.”¹⁷

In an effort to remedy its callous disregard for the rights of its students, including Nally and *The Leader*, HINU must take substantial steps to ensure that its policies and practices protect the rights of its students. To this end, we ask HINU to do the following:

1. Revise its CIRCLE values to make clear that these are aspirational, not mandatory.
2. Amend its Classroom Expression¹⁸ and Campus Expression¹⁹ policies to make clear that the right to free expression is not contingent upon compliance with the CIRCLE values. Further, the policy should be amended to clarify that student press and speech may be regulated by the university only if the expression falls into a category unprotected by the First Amendment, such as true threats, harassment, or incitement.
3. Distribute a revised student handbook to all HINU students, and ensure that the updated handbook is easily found and publicly available on HINU’s website.
4. Ensure that all outdated versions of HINU’s policies are removed from the website or marked clearly to indicate they are no longer in effect.

Making these revisions to the student handbook and ensuring that students are aware of these changes will begin to make amends for the hostile free expression climate HINU has created.

We also understand that *The Leader*’s new Plan of Operations—including the newspaper’s right to nominate and have confirmed a faculty adviser of its own choice, and its right to request that its faculty adviser be removed—will be approved.²⁰

As we ensure that HINU does, in fact, intend to repair its relationship with Nally and *The Leader*, please also see the attached request for records pursuant to the Freedom of Information Act (5 U.S.C. § 552), which was also filed using the online portal on FOIA.gov.

In addition, HINU must preserve all documents and electronically stored information as defined by Rule 34 of the Federal Rules of Civil Procedure, that are relevant to this dispute.

¹⁶ *Id.*

¹⁷ *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

¹⁸ Handbook, *supra* note 5, at 10.

¹⁹ *Id.* at 11.

²⁰ Please see our letter of October 26, 2020 for a discussion of the constitutional pitfalls of preventing student journalists from being able to direct the leadership of their own publications.

This includes any electronically stored information located on the “haskell.edu” email server. This includes without limitation electronic data within HINU’s custody and control that is relevant to this dispute, including without limitation emails, instant messages, and other information contained on HINU’s computer systems and any electronic storage systems. This also includes electronic data contained in computers, cellular phones, and other devices used by HINU administrators. As such, HINU must ensure that all HINU administrators involved in this dispute have preserved all electronic data relating to Nally and *The Leader* on their personal devices.

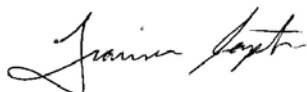
No procedures should be implemented to alter any active, deleted, or fragmented data. Moreover, no electronic data should have been disposed of or destroyed. We trust that HINU will continue to preserve such documents and electronically stored information.

Your directive to Nally represented a brazen departure from your First Amendment obligations, and it came as part of a pattern of unconstitutional actions at HINU.²¹ In order to move forward, HINU must take clear actions to demonstrate that it will now take its First Amendment obligations seriously. We request receipt of a response to this letter no later than the close of business on January 26, 2021.

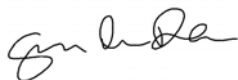
Sincerely,



Lindsay Rank
Program Officer, Individual Rights Defense Program
Foundation for Individual Rights in Education



Francine Compton
President
Native American Journalists Association



Sommer Ingram Dean
Staff Attorney
Student Press Law Center

Cc: Jennifer Segal Wiginton, Bureau of Indian Education Team Lead
Division of Indian Affairs, Office of the Solicitor

Encl.

²¹ See, e.g., Haskell Indian Nations University: Denial of Hearing After Student Kicked Out of Campus Housing, FOUND. FOR INDIVIDUAL RIGHTS IN EDUC., (Apr. 29, 2020), <https://www.thefire.org/kansas-student-forced-to-sleep-in-car-after-university-kicks-him-out-of-housing-during-stay-at-home-order>.

Preview Request

The Freedom of Information Act (FOIA) is a federal law that gives the public the right to make requests for federal agency records. Agencies may withhold information according to nine exemptions contained in the statute. The FOIA applies only to federal agencies. It does not apply to records held by Congress, the courts, or by state or local government agencies. Each state has its own public access laws that should be consulted for access to state and local records.

★ indicates a required field.

Agency Selection

Agency	U.S. Department of the Interior
Sub Agency	Bureau of Indian Education
Sub Agency	Bureau of Indian Education (General)

Please note that the complexity of your request will affect the order in which your request is processed. For more information on multitrack processing and how it affects your request, please see section 2.15 of our regulations

Fields marked with an asterisk (*) are required. In addition, you should indicate in the Description field your fee category (that is, whether you are a commercial-use requester, news media, educational or noncommercial scientific institution, or other requester as described in sections 2.38 and 2.39 of our regulations).

The FOIA offices in the bureaus/offices of the Department of the Interior are continuing to process FOIA requests to the best of their ability during the COVID-19 pandemic. To keep employees healthy and safe, the Department is maximizing telework flexibility and employing social distancing protocols. As a result of these precautions, most employees are working remotely and unable to collect hard copy records located in government facilities at this time. If your request is for hard copy records, the response to your request will very likely be delayed. In addition, employees may not receive FOIA requests that are sent by U.S. mail, overnight mail services, or facsimile in a timely manner.

You will receive an email shortly after this form has been submitted. This email confirms that your request was submitted successfully and that the selected FOIA office can begin review of your request. If you do not receive a confirmation email and would like to confirm your submission, please contact the bureau FOIA office through the information located on our [Contact](#) page.

The Office of Inspector General is not accepting FOIA requests through FOIAonline. You may file a request with the Office of Inspector General at: <https://www.doioig.gov/complaints/FOIA/how-to-submit-a-foia-request>.

The Department's expedited processing requirements correspond with 43 C.F.R. § 2.10 and § 2.20. A request for expedited processing must set forth the reasons why the request should be expedited. You must certify that the reasons given for seeking expedited processing of this request are true and correct to the best of your knowledge and belief.

The Department's fee waiver requirements correspond with 43 C.F.R. Part 2, Subpart G. Please be advised that by making a FOIA request, it shall be considered an agreement by you to pay all fees unless you have been granted a fee waiver or specify your willingness to pay fees up to a particular amount. Please note that a default amount of \$200 *will be prepopulated* to your request, but can be modified by you to be less or more. Additionally, the amount of fees you will be charged (or not charged) will be affected by your fee category. We will confirm this agreement in our acknowledgement letter.

If the bureau processing your request finds that the actual cost will exceed the amount you specify, the bureau will stop processing the request and consult with you (see 43 C.F.R. 2.49(d)). If you are seeking a fee waiver, it is your responsibility to provide detailed information to support your request by addressing all the criteria outlined in 43 C.F.R. 2.48. If you do not submit sufficient justification, your fee waiver request will be denied (see 43 C.F.R. 2.45). Please note the fact you may have received a fee waiver in the past is not determinative of whether you will receive one for this request--you still must submit sufficient justification.

Request Type

Request Type	FOIA
---------------------	------

Contact Information

Salutation	Miss
First Name	Katlyn
Middle Initial	
Last Name	Patton
Email Address	katlyn.patton@thefire.org
Organization	Foundation for Individual Rights in Education
Phone Number	2157173473
Fax Number	
Mailing Address Location	United States/US Territories
Address Line 1	510 Walnut Street
Address Line 2	Suite 1250
City	Philadelphia
State/Province	Pennsylvania
Zip Code/Postal Code	19106

Processing Fees

Will Pay Up To	\$10.00
-----------------------	---------

Description

Description

(1) Any emails (including attachments), memoranda, text messages, or social media messages sent or received by Dr. Ronald Graham to or from any employee or agent of Haskell Indian Nations University, from October 26, 2020 through the present date, which contain the terms "Indian Leader," "newspaper," "free expression," "free speech," "free press," "Jared," or "Nally."

(2) Any emails (including attachments), memoranda, text messages, or social media messages sent or received by Dr. Ronald Graham to or from any employee or agent of Haskell Indian Nations University, from October 26, 2020 through the present date, which reference the letter from Lindsie Rank, Foundation for Individual Rights in Education, to Dr. Ronald Graham, dated October 26, 2020.

(3) Any document (including emails, attachments to emails, memoranda, text messages, or social media messages) which reflect, pertain to, or substantiate Dr. Graham's statement in an undated letter to Jared Nally that Dr. Graham had "instructed my staff to review the status of the Leader's annual recognition process to ensure continued access by the Leader to its Student Bank account and Haskell resources." Privacy waiver: Please find enclosed with this request a privacy waiver executed by Jared Nally. 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 the Bureau of Indian Education contends it is entitled to withhold the document from production.

Request Expedited Processing

Make Request?

Yes

Justification

Request for expedited processing: Pursuant to 5 U.S.C. § 552(a)(6)(E) and 43 C.F.R. § 2.20, I request expedited processing of this request because there is a compelling need for the records and an "urgency to inform the public about an actual or alleged Federal Government activity." The Foundation for Individual Rights in Education is primarily engaged in disseminating information to inform the public about government affairs, and regularly publishes on its website news and information concerning matters relating to civil liberties in higher education. Each of the substantive requests included herein involve an actual or alleged Federal Government activity, namely the actions of an institution under the authority of the Bureau of Indian Education which violated students' First Amendment rights, and that institution's current purported efforts to correct that violation. (See the enclosed letters of October 26, 2020 and of today's date from Lindsie Rank, Foundation for Individual Rights in Education.) I request a response to this request for expedited processing within 10 calendar days under 43 C.F.R. § 2.20(e). I certify that the statements contained in this letter regarding the alleged activity and public concern are true and correct to the best of my knowledge.

Request a Fee Waiver

Make Request?

Yes

Justification

Fee waiver request: Pursuant to 5 U.S.C. § 552(a)(6)(E) and 43 C.F.R. § 2.45(a). The Foundation for Individual Rights in Education, Inc. (FIRE) is a 501(c)(3) non-profit, non-partisan organization dedicated to defending, preserving, and extending civil liberties on campus. The records sought herein are not sought for a commercial purpose and are, instead, requested by a non-profit organization to facilitate the public's understanding of government activities. The subject of the request specifically concerns identifiable operations or activities of the government, and the disclosable portions of the requested information will be meaningfully informative in relation to the subject matter of the request. The public interest would be well-served by granting a fee waiver. The disclosure will contribute to the public understanding of government operations, and the public's understanding will be significantly enhanced by the disclosure, as FIRE has expertise in the subject matter of the request and the intention and demonstrated ability to disseminate the information to the public. FIRE regularly shares information with other media outlets and maintains a blog regularly publishing information concerning similar matters. See, for example, <https://www.thefire.org/santa-clara-university-protects-student-free-speech-with-one-hand-censors-with-the-other>. Because the subject of this request pertains to an ongoing controversy, it is important that records be produced in an expedited manner in order to facilitate the public's interest in understanding, and being able to respond to, decisions by government officials. If a fee waiver is not granted, please apprise me if the estimated costs will exceed \$10.

Additional Information

Relevant park or refuge or site or
other location N/A

Attach Supporting Files

Attached File Name	Size (MB)	File Type
Jared Nally FERPA waiver & request.pdf	0.1932	Adobe PDF document

✓ I Agree.

I have read the Privacy and Security Notice and agree to the terms set forth.

✓ I Agree.

Affirmation. Pursuant to 28 USC § 1746, I declare and affirm that under penalty of perjury under the laws of the United States of America that all of the foregoing information, statements, and signatures submitted in connection with this request and in any supporting documents are true and correct to the best of my knowledge.

Request Confirmation

Request Information

Tracking Number	DOI-BIE-2021-001931
Requester Name	Under Agency Review
Submitted Date	01/19/2021
Request Phase	Submitted
Description	Under Agency Review