FIRE
Foundation for Individual Rights in Education

December 7, 2021

President Timothy D. Sands
Virginia Polytechnic Institute and State University
Office of the President
Burruss Hall 210
800 Drillfield Drive
Blacksburg, Virginia 24061

Sent via U.S. Mail and Electronic Mail (president@vt.edu)

Dear President Sands:

The Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

FIRE is concerned by sanctions imposed by Virginia Polytechnic Institute and State University ("Virginia Tech") on student Sean Lohr due to his protected expression at a university soccer match. While Lohr's nondisruptive expression may have offended university athletic officials and others at the event, it remains protected by the First Amendment, which requires public universities such as Virginia Tech to refrain from disciplining students for subjectively offensive speech.

I. Virginia Tech Punishes Lohr Due to His Expression at a University Soccer Match

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. To these ends, please find enclosed an executed privacy waiver authorizing you to share information about this matter.

Sean Lohr is a Virginia Tech student and a member of the Shirtless Boys, the "unofficial . . . cheering squad" of students who support the women's soccer team at home games at Thompson Field.[1] Head Coach Charles Adair extols the Boys' "tremendous influence" on the team for "increasing the atmosphere and the passion within the fan base."[2]

[1] Virginia Tech Women's Soccer (@HokiesWSoccer), TWITTER (Aug. 24, 2018, 4:23 PM), https://twitter.com/hokieswsoccer/status/1033087394298429440.

[2] *Id.* Adair adds that the players "enjoy seeing what they're doing, who they painted up, who they're representing," and that he and players "love having them support the" team. *Id.*; *see also* Virginia Tech

During and after several games throughout the fall 2021 semester, Senior Associate Athletics Director Reyna Gilbert-Lowry asked the Boys to "tone it down" when cheering in the stands.

At a match on September 26, 2021, in response to a referee's foul call on a Virginia Tech soccer player, many of the five hundred fans in attendance began booing and shouting at the referee. Lohr joined in by yelling "what?!?" several times at the official. In response, Gilbert-Lowry approached the Boys and again instructed them to quiet down. After Lohr asked her what she meant, she contacted campus security to remove the Boys from the event. Before security arrived, Lohr called her "a glorified PE [physical education] teacher" and began running up and down the stairs of the stadium encouraging the crowd to steer their derision toward her. The crowd began jeering Gilbert-Lowry as security escorted the Boys out of the stadium.

On September 27, one of the Boys emailed Gilbert-Lowry seeking clarification for why she removed them from the game.[3] Gilbert-Lowry replied: "There is no place for Sean Lohr's behavior and level of disrespect he showed to me last night, and previously."[4] Lohr then contacted Gilbert-Lowry to set up a time to discuss what happened.[5] Gilbert-Lowry responded by banning Lohr from all women's soccer home games for the remainder of the 2021-22 season, citing "last Sunday's actions and your continued level of disrespect to me."[6]

On October 15, Acting Director of Student Conduct Nick Whitesell summoned Lohr to a disciplinary hearing for charges of "Disorderly or Disruptive Conduct," "Failure to Comply," and "Abusive Conduct."[7]

At the hearing on October 22, administrators and students who witnessed the September 26 match, including Gilbert-Lowry and Lohr, agreed on the substantial facts of their encounter.[8] Virginia Tech did not present any evidence that any individual other than Gilbert-Lowry felt offended or disrupted by Lohr's expression at the September 26 match.[9]

On October 29, then-Assistant Director for Student Conduct Rachael Tully found Lohr responsible for Disorderly or Disruptive Conduct.[10] Tully explained that Lohr's "action's [sic] while leaving caused a disruption to the those [sic] in attendance at the game."[11] She claimed that Lohr "inferred [sic] with the ability for attendees to observe the sporting event without incident" and "Reyna's ability to perform her duties smoothly and without incident as she was

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Women's Soccer (@HokiesWSoccer), TWITTER (Sept. 25, 2014, 4:23 PM https://twitter.com/hokieswsoccer/status/515285021377437696 ("Shirtless boys at it again . . . .").

[3] Email from Sam Garbera to Gilbert-Lowry (Sept. 27, 2021, 5:05 PM) (on file with author).

[4] Email from Gilbert-Lowry to Garbera (Sept. 27, 2021, 6:32 PM) (on file with author).

[5] Email from Lohr to Gilbert-Lowry (Sept. 28, 2021, 7:18 PM) (on file with author).

[6] Email from Gilbert-Lowry to Lohr (Sept. 29, 2021, 3:22 PM) (on file with author).

[7] Disciplinary Letter from Whitesell to Lohr (Oct. 15, 2021) (on file with author).

[8] Hearing Outcome Letter from Tully to Lohr, at 1-3 (Oct. 29, 2021) (discussing October 22 disciplinary hearing testimony) (on file with author).

[9] *Id.* at 1-3.

[10] *Id.* at 3.

[11] *Id.* at 3.

the sports administrator on duty."[12] Tully added that Gilbert-Lowry does not have the power to unilaterally ban students from university athletic events.[13]

Tully imposed a deferred suspension until Lohr's impending graduation on December 17, 2021, a deferred denial of athletic privileges until May 14, 2022, a ban on contacting Gilbert-Lowry, and required Lohr to complete a "Letter of Acknowledgement and Community Impact.[14]

II. The First Amendment Bars Virginia Tech from Punishing Lohr for His Expression at The Soccer Match

It is well-established that the First Amendment does not make a categorical exception for merely offensive expression, and equally well-established that it constrains public universities in penalizing student speech. While Lohr's expression may have offended Gilbert-Lowry, it does not rise to the level of unprotected disruptive conduct, and thus remains protected by the First Amendment.

A. The First Amendment Applies to Virginia Tech as a Public University and Protects Lohr's Expression

It has long been settled law that the First Amendment is binding on public universities like Virginia Tech.[15] Accordingly, the decisions and actions of a public university—including the pursuit of student disciplinary sanctions[16]—must be consistent with the First Amendment.

Lohr's expression does not constitute disruptive conduct and is covered by the First Amendment's longstanding protection of subjectively offensive speech. Additionally, his removal from the stadium for yelling at a referee and questioning Gilbert-Lowry is impermissible viewpoint discrimination and thus cannot constitutionally form the basis of university discipline.

i. Lohr's expression alone cannot be penalized as "disruptive."

While a university has a critical interest in ensuring that its sporting events are not substantially and materially disrupted, that interest does not justify punishing a student for expression consistent with that traditionally found in the audiences at collegiate sporting events. That others, including university officials, find that expression distasteful or offensive does not render it disruptive.

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[12] *Id.* at 3.

[13] *Id.* at 4.

[14] *Id.* at 4-5. Lohr will be suspended and banned from "attending any Virginia Tech NCAA or Club Sport (home or away) athletic events" if he is "found in violation of any university policies" during a designated period. *Id.*

[15] *Healy v. James*, 408 U.S. 169, 180 (1972).

[16] *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 667–68 (1973).

The United States Supreme Court's seminal pronouncement on the First Amendment rights of students, *Tinker v. Des Moines*, is instructive.[17] There, high school students were punished for wearing black armbands to school to protest the Vietnam War.[18] Other students had worn "symbols of political or controversial significance," including "buttons relating to national political campaigns," and "even . . . the Iron Cross, traditionally a symbol of Nazism," but the school's administration had singled out the black armband for punishment.[19] This violated the students' First Amendment rights because in the absence of a "material and substantial interference with schoolwork or discipline," punishment of merely offensive expression in the school context was "not constitutionally permissible."[20] That requires—as the Supreme Court recently reiterated in *Mahanoy*—a showing that the speech "materially and substantially" disrupts the institution's activity, a "demanding standard" that is not met by "discomfort" or officials' own efforts to respond to the speech.[21]

There is no indication that Lohr's expression amounted to a "material and substantial" disruption of the soccer game. In response to the Boys joining the crowd in criticizing a referee over a foul call against their home team—a practice ubiquitous to virtually all large public sporting events[22]— Gilbert-Lowry renewed her request to "tone it down," which prompted her to call security when Lohr asked her to explain herself.

Boisterous yelling, especially at referees, falls squarely within the bounds of common and expected audience expression at outdoor university sporting events (including Virginia Tech soccer games),[23] where there is perhaps no place on campus better suited for such exclamation. In this context, Virginia Tech failed to produce any evidence that Lohr's expression "interfered with others' ability to participate" in this event, concluding his conduct was disruptive merely because attendees observed him cheering in the stands.[24]

Although Gilbert-Lowry felt that Lohr's expression was disrespectful toward her, there is no indication that Lohr materially disrupted her official duties. Rather, Lohr's expressive conduct is the mere "discomfort and unpleasantness" that the Court in *Tinker* found

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[17] 393 U.S. 503 (1969).

[18] *Id.* at 504. *Tinker* governs primary and secondary schools. *Mahanoy Area Sch. Dist. v. B.L.*, 141 S. Ct. 2038 (2021). However, college students retain their full array of First Amendment rights, as the First Amendment applies with equal force on public college campuses as in the broader community. *Healy*, 408 U.S. at 169. In the college context, the protections described by the Court in *Tinker* are the floor for student expressive rights, not the ceiling. Even under *Tinker's* disruption standard, the punishment here is unconstitutional.

[19] *Id.* at 510–11.

[20] *Id.* at 511.

[21] 141 S. Ct. at 2048.

[22] *E.g.*, Referee, *Dealing with Obnoxious Fans* (Oct. 21, 2019), https://www.referee.com/dealing-with-obnoxious-fans (providing practitioners' tips for referees for interacting with displeased fans); Matthew Schnell, *The Fans' Impact on the Whistle: How do the boos and jeers of shouting fans manipulate the referees' calls during a game?* DARTMOUTH SPORTS ANALYTICS (May 18, 2020) (analyzing how fan interaction with referees affects their game-time decisions); Jon Wertheim, *How Empty Stadiums Could Influence Referee Decision-Making*, SPORTS ILLUSTRATED (July 1, 2020), https://www.si.com/more-sports/2020/07/01/empty-stadiums-no-fans-impact-referee-decisions-home-field-advantage (same).

[23] *See, e.g.*, Virginia Tech Women's Soccer (@HokiesWSoccer), TWITTER (Nov. 12, 2021, 7:54 PM), https://twitter.com/HokiesWSoccer/status/1459323679540748288.

[24] Hearing Outcome Letter, *supra* note 8.

insufficiently disruptive to warrant punishment in a grade school classroom—an environment far less tolerant of potentially disruptive expression compared to a large outdoor university athletic event.[25] Without evidence of disruption, let alone substantial and material disruption, Virginia Tech may not mischaracterize Lohr's subjectively offensive expression toward Gilbert-Lowry as unprotected conduct.

Nor may Virginia Tech justify its discipline of Lohr on the basis that Gilbert-Lowry interpreted Lohr's expression, reasonably or not, to be insufficiently disrespectful to her, as there is no First Amendment exception for speech that is uncivil, disrespectful, rude, or even hateful. The Supreme Court has repeatedly, consistently, and clearly held that expression may not be restricted on the basis that others find it to be offensive. This core First Amendment principle is why the authorities cannot outlaw burning the American flag,[26] punish the wearing of a jacket emblazoned with the words "Fuck the Draft,"[27] penalize cartoons depicting a pastor losing his virginity to his mother in an outhouse,[28] or disperse civil rights marchers out of fear that "muttering" and "grumbling" white onlookers might lead to violence.[29] In ruling that the First Amendment protects protesters holding insulting signs outside of soldiers' funerals, 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."[30]

This principle applies with particular strength to universities, even when such expression is "offensive and sophomoric."[31] Expression that is subjectively offensive to college administrators remains protected, as "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.'"[32]

Lohr's expression, however distasteful to Gilbert-Lowry and other Virginia Tech administrators, is far from substantially disruptive and thus falls well within the First Amendment's protection.

ii. Virginia Tech's punishment of Lohr is impermissible viewpoint discrimination and unreasonable in light of Thompson Field's purpose.

Virginia Tech's discipline of Lohr for his expression at Thompson Field—toward Gilbert-Lowry and the referee—is unconstitutional viewpoint discrimination, "an egregious form" of

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[25] *Tinker*, 393 U.S. at 509.

[26] *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").

[27] *Cohen v. California*, 403 U.S. 15, 25 (1971).

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

[29] *Cox v. Louisiana*, 379 U.S. 536, 557 (1965).

[30] *Snyder v. Phelps*, 562 U.S. 443, 448, 461 (2011).

[31] *Iota Xi Chapter of Sigma Chi Fraternity v. George Mason Univ.*, 993 F.2d 386, 388–392 (4th Cir. 1993)

[32] *Papish*, 410 U.S. at 667–68.

censorship antithetical to the First Amendment.[33]

Regardless of the nature of any forum, "government regulation must be . . . viewpoint neutral,"[34] meaning that the government "must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction."[35] When regulations or authorities target "not subject matter but particular views taken by speakers on a subject, the violation" of expressive rights "is all the more blatant."[36] In the United States Court of Appeal for the Fourth Circuit, the decisions of which are binding on Virginia Tech, "viewpoint neutrality requires not just that a government refrain from explicit viewpoint discrimination, but also that it provide adequate safeguards to *protect* against the improper exclusion of viewpoints."[37]

Thompson Field is best characterized as a limited public forum, designed for the expressive purpose of fans observing collegiate soccer games and reacting vocally to the events of the contest.[38] Virginia Tech proudly advertises its sports stadiums as places where fans are encouraged to cheer. Lane Stadium is billed as "the toughest place in college football for opponents to play by Rivals.com in 2005 and one of the scariest places to play by ESPN.com in 2007," presumably due to the "the home-field advantage" the Hokies enjoy from the raucous, rowdy fans rooting for their home team.[39] The 2,500-seat Thompson Field stadium is similarly a space where the Shirtless Boys' enthusiastic cheering is appreciated by Coach Adair and his players,[40] who laud the Boys for "increasing the atmosphere and the passion within the fan base."[41] Accordingly, Lohr's speech is precisely the type of expression Virginia Tech allows,

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[33] *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995).

[34] *Child Evangelism Fellowship of Md. v. Montgomery Cty. Pub. Sch.*, 457 F.3d 376, 384 (4th Cir. 2006).

[35] *Id.*; *see also, e.g., Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 46 (1983) (holding that the government can limit expression in a nonpublic forum "as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speakers view."); *Jacobson v. United States Dep't of Homeland Sec.*, 882 F.3d 878, 882 (9th Cir. 2018) ("In a nonpublic forum, restrictions on speech must only be reasonable in light of the purpose served by the forum and viewpoint neutral.") (internal quotations and citations omitted); *Children of the Rosary v. City of Phx.*, 154 F.3d 972, 978 (9th Cir. 1998) ("In a nonpublic forum, the government . . . must not [make distinctions] based on the speaker's viewpoint.") (internal quotations and citations omitted).

[36] *Id.*

[37] *Id.* (emphasis in original).

[38] *ACLU v. Mote*, 423 F.3d 438, 443 (4th Cir. 2005); *Pleasant Grove City v. Summum*, 555 U.S. 460, 469 (2009) (internal quotations omitted) ("[A] government entity may create a designated public forum if government property that has not traditionally been regarded as a public forum is intentionally opened up for that purpose."); *Widmar v. Vincent*, 454 U.S. 263, 267 (1981) ("[T]he campus of a public university, at least for its students, possesses many of the characteristics of a public forum." *Widmar v. Vincent*, 454 U.S. 263, 267 (1981).

[39] Virginia Tech, *Hokies Sports, Football, Lane Stadium/Worsham Field* (last visited Nov. 29, 2021), https://hokiesports.com/sports/2018/4/20/lane-stadium-worsham-field.aspx?id=104 (providing overview and history of Virginia Tech's Lane Stadium).

[40] Virginia Tech, *History, Athletic Facilities* (last visited Nov. 29, 2021), https://history.unirel.vt.edu/physical_plant/athletic_facilities.html (describing cost and capacity of Thompson Field).

[41] Virginia Tech Women's Soccer, *supra* notes 1-2.

and even encourages, during sporting events at Thompson Field, rendering any university discipline for such expression impermissible.

Even if Virginia Tech did not traditionally or purposefully open its stadiums for fan expression during sporting events, Virginia Tech's viewpoint-based punishment of Lohr violates the First Amendment.[42] In *Flynn v. City of Santa Clara*, a federal district court found that "the First Amendment would still protect against viewpoint discrimination" in the nonpublic forum of professional football team's stadium.[43] The court held that stadium police officers' use of excessive force against a fan because "he took a knee in protest of how the police were mistreating his brother" raised a plausible claim that the use of force was the product of the officers' opposition to the expression.[44] Likewise, the United States Supreme Court found that a public school's refusal to allow a local church to use school facilities to show a film series advocating "Christian family values" because the film was "church related" was also viewpoint discrimination.[45] The Court explained how, even in a nonpublic forum, "the government violates the First Amendment when it denies access to a speaker solely to suppress the point of view he espouses on an otherwise includible subject."[46]

"Giving offense is a viewpoint,"[47] and an especially popular one when directed at referees at sporting events.[48] Lohr's show of discontent with a referee's ruling is a message intended and reasonably understood by sports fans nationwide.[49] Likewise, Lohr exhorting the crowd to direct their attention to Gilbert-Lowry' actions is expressive conduct meriting First Amendment protection.[50] Without any evidence of actual disruption, Virginia Tech's

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[42] *E.g.*, *Minn. Voters All. v. Mansky*, 138 S. Ct. 1876, 1888 (2018) (Even in a nonpublic forum, "the State must draw a reasonable line" and "be able to articulate some sensible basis for distinguishing what may come in from what must stay out.").

[43] 388 F. Supp. 3d 1158, 1167 (N.D. Cal. 2019).

[44] *Id.*

[45] *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 386 (1993).

[46] *Id.* at 394 (quoting *Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 806 (1985)); *see also Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 103 (2001) (finding that a public school policy of denying access to facilities to any group "for religious purposes" was unconstitutional viewpoint discrimination when applied to a private Christian organization seeking to use the space for religious activities); *Hills v. Scottsdale Unified Sch. Dist.*, 329 F.3d 1044, 1052 (9th Cir. 2003) (finding that public school district's exclusion of summer camp brochure offering Bible classes from a Christian perspective constituted impermissible viewpoint discrimination).

[47] *Matal v. Tam*, 137 S. Ct. 1744, 1749 (2017); *accord Iancu v. Brunetti*, 139 S. Ct. 2294, 2301, 204 L. Ed. 2d 714 (2019) ("[D]isfavoring ideas that offend discriminates based on viewpoint, in violation of the First Amendment." (internal quotation marks omitted).

[48] *See supra* note 22; *see also, e.g.,* Dan Lyons, *Referee Booed After Calling UNM Football 'New Mexico State'*, SPORTS ILLUSTRATED (Nov. 26, 2021), https://www.si.com/college/2021/11/26/new-mexico-fans-boo-ref; Rob Tornoe, *Angry Eagles fan from Delco was the star of the Birds' win over the Saints*, PHILADELPHIA INQUIRER (updated Nov. 22, 2021), https://www.inquirer.com/eagles/eagles-fan-yelling-cursing-fox-mary-kate-delco-linc-saints-20211122.html.

[49] *Id.*

[50] Freedom of expression "does not end at the spoken or written word." *Johnson*, 491 U.S. at 404. To the contrary, conduct "intend[ed] to convey a particularized message" likely to "be understood by those who viewed it" is expressive conduct, and while authorities may enforce content-neutral regulations that may incidentally impact expressive conduct, they cannot restrict the expressive conduct "because it has expressive elements." *Id.* at 404, 406. This is what protects the act of saluting a flag (or refusing to do so) (*West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 633–34 (1943)), wearing black armbands to protest war (*Tinker*,

punishment of Lohr for showing his disapproval toward the referee and Gilbert-Lowry is the "improper exclusion of viewpoints" foreclosed by the First Amendment.

III. Conclusion

Virginia Tech did not spend millions of dollars on a large outdoor stadium so that fans like the Boys can watch sporting contests in silence, or engage only in subdued hoopla. Lohr's expression is well within the standards of common, acceptable conduct at such sporting events, and Virginia Tech's viewpoint-based punishment of Lohr is untethered to any legitimate disruption concerns. As such, Virginia Tech's punishment of Lohr violates his free speech rights and the university's legal obligations as a public university bound by the First Amendment.

FIRE calls on Virginia Tech to rescind all sanctions imposed upon Lohr, and we request receipt of a response to this letter no later than the close of business on December 21, 2021, confirming that the university has cleared Lohr's disciplinary record.

Sincerely,

Zachary Greenberg
Senior Program Officer, Individual Rights Defense Program

Cc: Rachael Tully, Student Conduct Coordinator
Nick Whitesell, Acting Director, Student Conduct
Frank Shushok, Jr., Vice President for Student Affairs
Byron Hughes, Dean of Students

Encl.

393 U.S. at 505–06), raising a "seditious" red flag (*Stromberg v. California*, 283 U.S. 359, 369 (1931)), burning an American flag (*Johnson,* 491 U.S. at 414), picketing or leafletting (*United States v. Grace*, 461 U.S. 171, 176 (1983)), and participating in a sit-in (*Brown v. Louisiana*, 383 U.S. 131, 383 (1966)).

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, Sean Lohr, born on [redacted], do hereby authorize Virginia Tech (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).

Records requested under state public records law: To the extent the applicable public records law would require a faster response, a more comprehensive response, or production of copies of records:

- I request, pursuant to the applicable state public records law, copies of all records that would be available for my inspection under FERPA;
- To the extent the public records law allows disclosure of responsive records, I request that such records be produced in an electronic format, preferably by email.

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

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.

Per 34 CFR § 99.10(b), these records must be made available within **45 days**.

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.

[redacted]

12/5/2021

Date