



January 11, 2022

Board of Trustees  
Nassau Community College  
Administrative Tower Building, 10th Floor  
One Education Drive  
Garden City, New York 11530

*Sent via U.S. Mail and Electronic Mail (BoardOfTrustees@ncc.edu)*

Dear Members of the Board of Trustees:

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 the Nassau Community College (NCC) Board of Trustees' attempt to silence criticism of the Board and NCC President Jermaine Williams. The First Amendment protects faculty members' right to speak on matters of public concern, including criticism of their institution's leadership. Directives that faculty stop voicing their complaints chill speech and violate faculty's expressive rights.

**I. The Letters from NCC Faculty and the Board's Response**

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.

On December 14, 2021, the NCC faculty union sent (and published on its website) an open letter to the Board calling for the "immediate removal" of Williams and other administrators. The letter expressed a "loss of trust and faith" in NCC's administration, citing the alleged failure of Williams' policies to correct health and safety issues, an "ill-conceived" policy reassigning technologists to ITS, and "questionable" spending of COVID-19 emergency funding.<sup>1</sup> Following this letter, Williams announced he would step down as NCC president and take a new post as president of a Maryland college.<sup>2</sup> Faculty members sent a second letter

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<sup>1</sup> Letter from Faren Siminoff, President, Nassau Cmty. Coll. Fed'n of Teachers, et al., to Nassau Cmty. Coll. Bd. of Trustees, Dec. 13, 2021, *available at* <https://nccft.org/2021/12/15/letter-of-discontent>.

<sup>2</sup> Craig Schneider, *Nassau Community College president quits, takes job in Maryland*, NEWSDAY (Dec. 17, 2021), <https://www.newsday.com/long-island/education/ncc-president-resigns-1.50455112>.

to the Board on December 22, criticizing its handling of Williams' transition and the lack of adequate leadership in the interim.<sup>3</sup>

On December 23, the Board responded with a statement, citing its role as the “governing body of” NCC and its “final authority for college business” and “all legal and fiduciary decisions.” After defending itself and Williams, the Board noted that the college “is under extreme financial pressure.” Asserting that criticism of Williams “detracts from the appeal of our College for future presidential candidates,” the Board warned: “The Nassau Community College Community – Board, faculty, and staff have a shared responsibility to ensure minimal disruption in this time of change. That means that the correspondence disparaging Dr. Williams and his leadership of the College must stop.”<sup>4</sup>

## **II. The Board's Response to the Faculty Letters Chills Speech Protected by the First Amendment**

It has long been settled law that the First Amendment binds public colleges.<sup>5</sup> The Board's letter invoking its legal authority and equating criticism of institutional leaders with “disruption” discounts the strong protection for speech the First Amendment affords.

### ***A. The First Amendment Limits NCC's Authority to Police Faculty Expression***

Faculty at public colleges do not “relinquish First Amendment rights to comment on matters of public interest by virtue of government employment.”<sup>6</sup> A government employer cannot penalize an employee for speaking as a private citizen on a matter of public concern unless it demonstrates interests “as an employer, in promoting the efficiency of the public services it performs through its employees” that outweigh the interest of the employee “as a citizen, in commenting upon matters of public concern[.]”<sup>7</sup>

Faculty criticism of NCC's leadership is speech on matters of public concern, which includes speech that “can be fairly considered as relating to any matter of political, social, or other concern to the community[.]”<sup>8</sup> The policy decisions of a public college's leadership concern not only the interests of the college community, including faculty, staff, and students, but also those of the broader public. Indeed, criticism of Williams and his transition from the college has attracted news coverage, further indicating its significance as an issue of public concern.<sup>9</sup>

Likewise, it is clear that the faculty spoke as private citizens. The “critical question” in determining whether the speech was that of an employee or private citizen is “whether the speech at issue is itself ordinarily within the scope of an employee's duties, not whether it

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<sup>3</sup> Email from Nassau Cmty. Coll. Fed'n of Teachers to Nassau Cmty. Coll. Bd. of Trustees, (Dec. 22, 2021, 3:58 pm) (on file with author).

<sup>4</sup> Email from Nassau Cmty. Coll. Bd. of Trustees to Nassau Cmty. Coll. Fed'n of Teachers (Dec. 23, 2021, 3:49 pm) (on file with author).

<sup>5</sup> *Healy v. James*, 408 U.S. 169, 180 (1972).

<sup>6</sup> *Connick v. Myers*, 461 U.S. 138, 140 (1983).

<sup>7</sup> *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968).

<sup>8</sup> *Snyder v. Phelps*, 562 U.S. 443, 453 (2011).

<sup>9</sup> *Schneider*, *supra* note 2.

merely concerns those duties.”<sup>10</sup> Publicly criticizing college leadership is not within the scope of faculty members’ daily responsibilities and instead is merely incidental to their primary role as educators and scholars.

Faculty are not required to share their concerns only with administrators and otherwise remain silent about the policies and practices of their own administrations. In the seminal case addressing the protection of employee speech under the First Amendment—in which a public school teacher criticized his administration in a public letter identifying himself as an employee—the Supreme Court of the United States explained:

Teachers are, as a class, the members of a community most likely to have informed and definite opinions as to how funds allotted to the operation of the schools should be spent. Accordingly, it is essential that they be able to speak out freely on such questions without fear of retaliatory dismissal.<sup>11</sup>

Given NCC administrators’ roles as public officials and community leaders, Williams and the Board necessarily will receive criticism from various sources. This includes criticism from college employees, whose informed commentary on the sufficiency of institutional leadership is central to public debate. Restricting faculty criticism stifles this debate by excluding a key perspective from the conversation.

Further, the assertion that faculty criticism may be “disruptive” to Williams’ career plans or the college’s search for a new president is speculative at best. NCC may regulate faculty criticism only when it can demonstrate the speech has interfered with faculty duties or regular college operations *and* that institutional interests outweigh those of its faculty members.<sup>12</sup> No such interest exists here, as criticism of senior leadership is an inherent aspect of the shared governance NCC purports to embrace. Engendering a pretense of a sedate faculty by suppressing criticism of current leaders will leave future leaders ill-prepared to confront the challenges facing NCC.

### **III. Conclusion**

By instructing faculty members that criticism of college leadership “must stop,” NCC’s Board violates its obligations under the First Amendment. We call on the Board to clarify that faculty remain free to criticize Williams and other college administrators.

We request receipt of a response to this letter by the close of business on January 25, 2022.

Sincerely,



Anne Marie Tamburro  
Program Officer, Individual Rights Defense Program

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<sup>10</sup> *Lane v. Franks*, 573 U.S. 228, 240 (2014).

<sup>11</sup> *Pickering*, 391 U.S. at 571–73.

<sup>12</sup> *Id.* at 573.