FIRE
Foundation for Individual Rights in Education

March 17, 2022

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Cedar Falls, Iowa 50613

Sent via U.S. Mail and Electronic Mail (nicholas.rafanello@uni.edu)

Dear Mr. Rafanello:

The Foundation for Individual Rights in Education[1] is concerned that the University of Northern Iowa has instructed student resident assistants that they must clear their communications with the media with UNI officials. This practice of prior review violates students' fundamental First Amendment rights and stifles the student press. We request that UNI revise any policies or practices it maintains so that they make clear to RAs that they may speak with the press in their individual capacities.

Although FIRE could not locate an official UNI policy concerning RAs' responses to media inquiries, Residence Life Coordinator Jordan Rockwell sent an email to RAs stating that they must clear "RA-themed media responses" with the "marketing team" so that the team may "address any issues."[2] Rockwell said this email was sent because of an anonymous survey by the *Northern Iowan* student newspaper.[3]

While the university may properly regulate RAs speaking *on behalf* of UNI Housing and may prevent RAs from sharing information made confidential under the law, the university may not regulate students' ability to speak with the media about their personal experiences as RAs or as students living in campus housing. Students who take employment roles at public institutions do not "relinquish First Amendment rights to comment on matters of public interest by virtue of government employment."[4] Instead, they retain their right to speak as

[1] FIRE is a nonpartisan nonprofit dedicated to defending freedom of the press, freedom of expression, and other essential liberties on America's college campuses.

[2] Email from Jordan Rockwell, Residence Life Coordinator, Univ. of Northern Iowa, to Resident Assistants (Feb. 11, 2022) (on file with author).

[3] *Id.*

[4] *Connick v. Myers*, 461 U.S. 138, 140 (1983).

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citizens on matters of public concern.[5] This practice—requiring approval of any "RA-themed" comments to the media—threatens the expressive rights of the university's student employees.

Requiring approval of answers to interview questions provided by RAs in their personal capacities is problematic not only because it provides UNI access to these answers prior to publication, but also because it gives the university access to journalists' questions prior to publication. This constitutes an unconstitutional prior review in both respects. These practices allow UNI to review significant elements of a story's content before publication. This constitutes an unconstitutional prior review.

Because information and quotes gathered through interviews often yield much of a story's specific content, knowing the questions journalists will ask and the answers they receive gives UNI officials power to control the message. The fact that UNI will gain this advance window—and that journalists, and the RAs with whom they connect, know this—also threatens to chill the types of questions the media pose (whether because they wish to avoid disclosure to UNI before publication of an article, or out of concern about the candidness of answers by interviewees who know UNI is "listening," or both).

Even more problematic is the university's requirement that media relations officials *approve* RAs' messages prior to the media receiving them. This is a clear violation of the First Amendment rights of UNI students, which the university is legally bound to respect.[6] Practices that require individuals to seek approval from officials before speaking are "offensive—not only to the values protected by the First Amendment, but to the very notion of a free society."[7] This is because such schemes not only *chill* speech about important issues of public concern, but also allow the government—here, the university—to *restrict* that speech.

For example, if the university were to bar an RA from sending a particular message to a journalist, that would constitute an unconstitutional prior restraint, "the most serious and the least tolerable infringement on First Amendment rights."[8] UNI cannot condition employees' communication with members of the media, including student media, on an administrator's prior approval of the message. This practice impermissibly burdens the First Amendment rights of those subject to it.

In order to justify such a prior restraint on speech by government employees, including employees of public universities, the government entity must demonstrate "reasonable ground to fear that serious evil will result if free speech is practiced[,]" that these "recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these

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

[6] *Healy v. James*, 408 U.S. 169, 180 (1972) ("[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, 'the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.'") (internal citation omitted).

[7] *Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Vill. of Stratton*, 536 U.S. 150, 165–66 (2002).

[8] *Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976).

harms in a direct and material way."[9] In cases considering blanket prior restraints on government employee speech, courts have consistently struck down such bans as violative of the First Amendment.[10]

Additionally, restricting student journalists' access to RAs is a violation of the public's right to know, for which the press is an important conduit. Courts have recognized that members of the press act as "surrogates for the public" in keeping a watchful eye on the operations of government.[11] Obstructing journalists' access to UNI RAs not only violates those RAs' expressive rights, but also restricts press freedom and impinges upon the public's right to know about important decisions and actions made by the institution, including important matters of public concern like public safety for student residents during the COVID-19 pandemic, health and safety conditions of university housing, and other issues of public concern on campus.

Accordingly, we request that UNI create a policy and publicly clarify that the university will no longer require RAs to share media requests and responses made in their personal capacities as private citizens, provided they do not reveal information made confidential by law. We also request that UNI provide training to RAs regarding their First Amendment rights and their right to speak with the media.

We appreciate your attention to our concerns and request a response to this letter by Thursday, March 31, 2022.

Sincerely,

Sabrina Conza
Program Officer, Individual Rights Defense Program

Cc: Cassie Mathes, Director, Office of University Relations
Mark A. Nook, President
Tim McKenna, University Counsel

[9] *United States v. Nat'l Treasury Emps. Union*, 513 U.S. 454, 475 (1995) (cleaned up).

[10] *See, e.g.*, *Harman v. City of New York*, 140 F. 3d 111, 116 (2d Cir. 1998) (striking down a policy requiring that "[a]ll contacts with the media regarding any policies or activities of the Agency" be referred to Media Relations); *Barrett v. Thomas*, 649 F.2d 1193, 1199 (5th Cir. 1981) (holding unconstitutional an overbroad employee speech policy). For further discussion of cases involving government bans on employee speech, *see Protecting Sources and Whistleblowers: The First Amendment and Public Employees' Right to Speak to the Media*, BRECHNER CTR. FOR FREEDOM OF INFO., Oct. 7, 2019, http://brechner.org/wp-content/uploads/2019/10/Public-employee-gag-orders-Brechner-issue-brief-as-published-10-7-19.pdf.

[11] *Richmond Newspapers v. Virginia*, 448 U.S. 555, 573 (1980).