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March 24, 2022

VIA EMAIL

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Sabrina Conza
Program Officer, Individual Rights Defense Program
Foundation for Individual Rights in Education
510 Walnut Street, Suite 1250
Philadelphia, PA 19106

Re: Linfield University/Reshmi Dutt-Ballerstadt

Dear Ms. Conza:

We represent Linfield University which has asked me to respond to your letter of March 24, 2022, relating to and apparently requested by or on behalf of Linfield Professor Dutt-Ballerstadt.

It does not appear that The Fire was provided accurate information about the events which preceded initiation of an external investigation at the University, nor information about the nature of a complaint that the University has received. It is additionally inaccurate to suggest that the complaint and investigation relate to someone having been “bothered by” a statement on a private social media posting. While the University is respectful of The Fire and its mission, it disagrees that The Fire has the authority to demand it cease an investigation which resulted from an equally protected complaint from a colleague of Professor Dutt-Ballerstadt’s. Indeed, it appears your letter was likely composed before the Supreme Court issued its unanimous landmark opinion in *Houston Community College System v. Wilson* (opinion issued March 24, 2022) which has much to say about issues such as the one before the University.

As you note, Linfield University is a private institution. It has an internal policy that permits employees to raise issues about terms and conditions of their employment. The University has received a complaint from an employee which raises concerns about certain work-related conduct of a colleague, another employee. Consistent with that policy, the University has opened an investigation by engaging an independent investigator, whose task will be to uncover and understand the underlying facts giving rise to this dispute. The complaint was not trivial on its face and presented content meriting an investigation. Upon the completion of the investigation, when the facts are known, there may be additional action taken, or there may be no action taken. The University makes no prediction nor should The Fire.

As a private institution, Linfield is responsible for the promulgation and enforcement of its policies. It has considered and has investigated complaints from employees, including faculty, who believe that University policies have been violated or that colleagues have behaved

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improperly or abusively. We disagree that a person against whom a complaint has been lodged is entitled to suppress an investigation into his or her conduct simply by asking a third person to demand an end to an investigation. The University believes that those who raise concerns in this instance are equally entitled to be heard and hold views which are also of importance to the institution.

The University understands that you have provided an authorization for release of information from the individual who contacted you. Providing the information you requested would necessarily implicate information related to any persons who have raised concerns and any persons who have relevant information; those persons have not authorized release of their records to The Fire. Accordingly, the University is not in any position to provide its records in response to your demand.

The University considers the recent unanimous opinion of the Supreme Court to be worthy of your consideration, as it is of ours. It is now clear, if it was not before, that among other things an institution has the right to respond to misconduct by learning the facts and even by censuring that conduct -- even if it involved speech. Even where the First Amendment applies (and it does not apply here), it permits "free speech on both sides and for every faction on any side" such that the protection of speech may not itself be used to deny one person the very right the other exercises. That is, unfortunately, what you are asking here: for Linfield to tell one employee that another employee is immune from scrutiny because of what was said.

Since the investigation is not complete, the University believes that The Fire lacks meaningful information about what really happened, why complaints were raised, or what underlying facts might be disclosed. We do know, however, that individual employees of the University have the right to make their complaints, and when the conduct in question appears to or may violate policies, standards of conduct, or even the law, appropriate action can be taken. The University is prepared to wait for the facts to be developed to learn what happened here. To suggest otherwise seems an affront to the voices of other persons who have an important stake in their own employment.

Very truly yours,

BARRAN LIEBMAN LLP



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