



FIRE

Foundation for Individual
Rights and Expression

November 18, 2022

Dr. William P. Gilligan
Interim President & Professor Emeritus
Emerson College
180 Tremont Street, 14th Floor
Boston, Massachusetts 02116

URGENT

Sent via U.S. Mail and Electronic Mail (william_gilligan@emerson.edu)

Dear Interim President Gilligan:

FIRE¹ is concerned by Emerson's continued viewpoint-discriminatory treatment of the college's student chapter of Turning Point USA. Most recently, Emerson denied the group's event proposal for a film screening of a CBS News documentary about free speech on campus,² which includes an interview with KJ Lynam, a former Emerson student who left the school after the "China Kinda Sus" controversy.³ Denying this event violates Emerson's promises of free expression to its students.

Earlier today, Emerson administrators also prohibited TPUSA from posting flyers advertising a screening of Matt Walsh's documentary "What Is a Woman" because the emojis used in the posters, which depict pregnant men and women, would provoke "negative responses."⁴ While the event can still proceed, the group is unable to promote the event.

Given Emerson's lack of responsiveness to FIRE's past letters and public advocacy, please find enclosed a draft of the complaint we will be filing with the New England Commission of Higher Education concerning the state of free expression on Emerson's campus. As our complaint

¹ As you will recall from previous correspondence, the Foundation for Individual Rights and Expression (FIRE) is a nonpartisan nonprofit dedicated to defending freedom of speech. You can learn more about our expanded mission and activities at thefire.org.

² CBS News, Are the Kids Are All Right?, YouTube (May 12, 2022) https://www.youtube.com/watch?v=ccJmV4oz_ck.

³ Ann Dailey Moreno, WCHSTV, *Emerson College punishes student club over stickers criticizing China's government* (Oct. 7, 2021) <https://wchstv.com/news/nation-world/emerson-college-punished-student-club-over-stickers-criticizing-chinas-government>.

⁴ Email from Jennifer Nival, Director of Student Engagement and Leadership, to Sam Neves (Nov. 18, 2022, 11:49 AM) (on file with author).

explains, Emerson’s repeated refusal to ameliorate its treatment of TPUSA is in contravention of its accreditation, to which Emerson is bound.⁵

On October 23, Sam Neves submitted a request through EmConnect to host a screening of the “CBS Reports” series documentary, “Are the Kids All Right?: Free Speech.”⁶ TPUSA’s event description read:⁷

Are The Kids All Right?: Free Speech is a CBS documentary starring former Emerson student KJ Lynum, a Chinese student raised in Singapore.

KJ dropped out of Emerson because of the bullying and harassment she suffered on campus after Emerson President William Gilligan, OISA director Andrea Popa, ISA director Tamia Jordan, race-baiter Samantha Ivery, and SEAL incited students to bully her by telling the entire student body that she was an “anti-Asian bigot,” accusing her of distributing “xenophobic weapons,” encouraging students to report her, and calling for her punishment.

Erik Muurisepp, Associate Vice President of Campus Life, told Neves that after reviewing the submission, he would not approve the event. He pointed to alleged “false information” and what he “would categorize as misinterpretation of fact [sic] information and previous communications,” along with “accusatory statements made towards individuals (staff) at the College.”⁸

In a follow-up email, Neves offered to remove the phrase “race-baiter” and the accusation that Emerson “incited students to bully [Lynum],”⁹ but Muurisepp responded that the “language and accusations” in the description “are not completely factual,” that he “read them as inciteful,”¹⁰ and the event would therefore still not be approved.

As a threshold matter, the event description does not meet the legal definition of incitement, which applies only to speech “directed to inciting or producing imminent lawless action and . . . likely to incite or produce such action.”¹¹ TPUSA’s event description, while heavily critical of Emerson administrators, does not even begin to approach this high bar.

⁵ Integrity, “Standards for Accreditation,” Standard Nine: Integrity, Transparency, and Public Disclosure, NEW ENGLAND COMM’N OF HIGHER EDUC., https://www.neche.org/resources/standards-for-accreditation#standard_nine [<https://perma.cc/46WN-HCDV>].

⁶ CBS News, *supra* note 2.

⁷ Sammi Neves Event Request for Turning Point USA (Oct. 23, 2022, 7:42 PM) (on file with author).

⁸ Email from Erik Muurisepp, Associate Vice President of Campus Life, to Sam Neves (Oct. 26, 1:10 p.m.) (on file with author).

⁹ Email from Neves to Muurisepp (Oct. 26, 1:27 PM) (on file with author).

¹⁰ Email from Muurisepp to Neves (Oct. 27, 2:40 PM) (on file with author).

¹¹ *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).

Expansive interpretations of these exceptions would chill political expression. The Supreme Court—interpreting First Amendment language coextensive with the expressive freedoms Emerson promises its students—has urged that “extreme care” be taken to ensure that an exacting incitement standard be met, lest “highly charged political rhetoric lying at the core” of freedom of expression unreasonably be interpreted as unprotected “true threats” or “incitement.”¹²

Emerson’s strong free speech promises also protect students’ right to share ideas or opinions that offend some on campus. Emerson’s policies state in no uncertain terms that it “is not the role of the College to shield individuals from ideas and opinions that are different from their own; that they may find disagreeable or even offensive.”¹³ Denying approval for the event because of offense taken at “accusatory statements” violates these clear principles. A sole administrator serving as gatekeeper for what speech is allowed on campus is also improper. The Supreme Court has held “government officials”—the analog here being university administrators—“cannot make principled distinctions” between what speech is sufficiently offensive or inoffensive.¹⁴

That is because the principle of freedom of speech does not exist only to protect non-controversial expression; it exists precisely to protect speech that some members of a community may find controversial or offensive—including student dissent from the university’s own stances. As the Supreme Court explained:¹⁵

[Speech] may indeed best serve its high purpose when it induces a condition of unrest ... or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea.

Finally, denying TPUSA’s event based on the subjective view that there are “misinterpretations of fact” in the description violates principles of free expression. A primary “function of free speech ... is to invite dispute,”¹⁶ and any conception of freedom of expression must necessarily protect “not only informed and responsible criticisms” but also “the freedom to speak foolishly and without moderation.”¹⁷ If Emerson objects to TPUSA’s characterization of its actions, Emerson may use its own expressive rights to correct the record. But as a college clearly committed to free expression, it may not use institutional punishment to silence critics.

¹² *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 926–27 (1982).

¹³ *Statement on Free Expression*, EMERSON COLL., <https://emerson.edu/departments/community-standards/code-community-standards/statement-freedom-expression> [<https://perma.cc/X6S2-MR3M>].

¹⁴ *Cohen v. California*, 403 U.S. 15, 25 (1971).

¹⁵ *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949).

¹⁶ *Id.*

¹⁷ *Baumgartner v. United States*, 322 U.S. 665, 673–74 (1944).

As mentioned above, given Emerson's lack of responsiveness to FIRE in the past, we plan on filing the enclosed accreditation complaint shortly, barring a substantive response to our concerns from Emerson by Monday, November 28.

Sincerely,

A handwritten signature in black ink, appearing to read "Graham Piro". The signature is fluid and cursive, with the first name "Graham" and last name "Piro" clearly distinguishable.

Graham Piro
Program Officer, Campus Rights Advocacy

Cc: Kenneth Danton, Associate General Counsel
Erik Muurisep, Associate Vice President of Campus Life

Encl.



FIRE

Foundation for Individual
Rights and Expression

November 28, 2022

New England Commission of Higher Education
301 Edgewater Place, Suite 210
Wakefield, Massachusetts 01880

Re: [Emerson College]

Sent via NECHE Complaint Form

To the New England Commission of Higher Education:

As a nonpartisan nonprofit dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience,¹ the Foundation for Individual Rights and Expression (FIRE) respectfully submits this letter as a complaint, and as supplemental support for any other complaints by students and faculty, regarding the above-referenced institution. Enclosed, please find all correspondence between FIRE and the institution relevant to our complaint, together with copies of the relevant institutional policies and/or procedures.

Emerson College, an institution accredited by the Commission, is not in compliance with Standard of Accreditation 9.3 (Integrity, Transparency, and Public Disclosure), which requires that the institution “is committed to the free pursuit and dissemination of knowledge,” and “assures faculty and students the freedom to teach and study, to examine all pertinent data, to question assumptions, and to be guided by the evidence of scholarly research.”²

For the past 14 months, Emerson administrators have repeatedly chilled student expression on campus by singling out a student organization, Turning Point USA (TPUSA), and its members, in violation of Emerson’s stated promises of free expression, which purport to include a strong commitment that the First Amendment “is of high importance,”³ and the

¹ We invite you to learn more about our mission and activities at thefire.org.

² Integrity, “Standards for Accreditation,” *Standard Nine: Integrity, Transparency, and Public Disclosure*, NEW ENGLAND COMM’N OF HIGHER EDUC., https://www.neche.org/resources/standards-for-accreditation#standard_nine [<https://perma.cc/46WN-HCDV>].

³ *Statement on Freedom of Expression*, EMERSON COLL., <https://emerson.edu/departments/community-standards/code-community-standards/statement-freedom-expression> [<https://perma.cc/X6S2-MR3M>].

assurance that students have the “right to participate in the open exchange of ideas and freedom of expression.”⁴

In September 2021, TPUSA, at the time a student organization recognized by Emerson, distributed on campus stickers with the phrase “China Kinda Sus” in criticism of the Chinese government. This generated public criticism, in response to which Emerson suspended, investigated, and publicly denounced the group. Despite stating the investigation had not uncovered evidence that the group intended to target any subjects other than the Chinese government, the administration still placed a formal warning on the group’s record. This had an immediate chilling effect on TPUSA’s speech on campus, as after this sanction and public denouncement, the group was unable to obtain a faculty advisor, which Emerson’s administration used as grounds to derecognize the group.

When a student member of TPUSA attempted to put up flyers to respond to criticism of the organization presented in an opinion piece in the campus newspaper, Emerson administrators refused to approve the flyers. FIRE advocated for both the rights of the student to put up his posters, and the rights of publications to publish opinion pieces highly critical of other student groups, or to decline to do so. This is the sort of “more speech” approach demanded by a commitment to the principles espoused by the First Amendment—a commitment Emerson has continually violated.

FIRE’s enclosed correspondence seeking resolution of these incursions on the freedom of expression protected by Standard 9.3 has proven unfruitful. Yet in Emerson’s search for a new president, the college stated that “free expression” of diverse ideas is a “non-negotiable” value for the institution.⁵ For the college to visibly not live up to its own publicly stated commitments chills speech by indicating that the college will not practice the policies it proclaims.

Accrediting agencies, including the Commission, are often the last line of defense for students’ and faculty members’ freedom of expression at institutions of higher education. Students’ limited time at a college or university impacts their ability to push for changes at their institutions over the long term, and their ability to affect policy is largely at the whim of campus administrators. When colleges enshrine free speech protections in their policies, they often flout them—as Emerson did—and it can be difficult for students to hold their institutions accountable. Even when a legal remedy is available, the typical student lacks the time and resources to institute costly, protracted litigation.

The Commission’s Standard 9.3 is one of the strongest protections for student and faculty expression at private institutions in the United States. Institutions should take it seriously and correct departures from that admirable standard when brought to their attention. Emerson’s refusal to bring its conduct in line with Standard 9.3 despite repeated efforts at resolution

⁴ *Rights and Responsibilities for Students/Student Organizations*, EMERSON COLL., <https://emerson.edu/departments/community-standards/code-community-standards/rights-responsibilities-studentsstudent> [<https://perma.cc/6CMM-2AJE>].

⁵ *Presidential Search Update: Prospectus*, EMERSON COLL. (July 22, 2022), https://emerson.edu/sites/default/files/pdf/Presidential_Search/Emerson_College_President_07212022.pdf [<https://perma.cc/J3FX-UR8P>].

merits the Commission's attention in the same way that other accrediting bodies have taken action against institutions for departing from a commitment to freedom of expression.⁶

In the event that FIRE may be of assistance in providing further information or clarification, please do not hesitate to contact me. I may be reached via email at graham.piro@thefire.org and phone at (215) 717-3473.

Sincerely,



Graham Piro
Program Officer, Campus Rights Advocacy

Encl.

⁶ For example, the Middle States Commission on Higher Education cited Mount St. Mary's University administrators' intolerance for criticism, in apparent breach of Standard II, as a basis to open an inquiry into a recently reaccredited institution. Susan Svrluga, *Mount St. Mary's University president resigns*, WASH. POST (Feb. 29, 2016), <https://www.washingtonpost.com/news/grade-point/wp/2016/02/29/mount-st-marys-future-direction-on-the-table-as-leaders-meet-today>. The Higher Learning Commission also placed Missouri's Southwest Baptist University on probation for not being in compliance with three of the "Core Components" required for accreditation, including a requirement that "the institution is committed to academic freedom and freedom of expression in the pursuit of truth in teaching and learning." https://www.hlcommission.org/download/_BoardActionLetters/HLC%20Action%20Letter%20-%20Southwest%20Baptist%20University%2011.8.21.pdf.