



FIRE

Foundation for Individual
Rights and Expression

December 14, 2022

Tania Tetlow
Office of the President
Fordham University
441 East Fordham Road
Bronx, New York 10458

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

Dear President Tetlow:

FIRE¹ is concerned by recent reporting² that Fordham University prohibits residential assistants (RAs) from speaking with the media on Office of Residential Life (ResLife)-related matters.³ While Fordham may properly regulate RA speech *on behalf* of the university and may prevent RAs from sharing information made confidential by law, the university may not regulate students' ability to speak with the media about their personal experiences as RAs.

Although private institutions like Fordham are not bound by the First Amendment, Fordham has adopted clear promises protecting students' and employees' freedom of expression.

In its Student Handbook, Fordham states that “[b]y its very nature, the University is a place where ideas and opinions are formulated and exchanged,”⁴ and that “[e]ach member of the University has a right to freely express their positions and to work for their acceptance whether they assent to or dissent from existing situations in the University or society.”⁵ This firm commitment to uphold students' expressive rights represents an obligation on the part of the university. And when students and employees read in Fordham's policies that they have robust expressive rights, they would reasonably look to First Amendment jurisprudence to delineate

¹ As you may recall from prior correspondence, FIRE is a nonpartisan nonprofit dedicated to defending freedom of expression, conscience, and religion, and other individual rights on America's college campuses. You can learn more about our recently expanded mission and activities at thefire.org.

² *Speak Up, But Not at Fordham*, FORDHAM RAM (Nov. 30, 2022), <https://thefordhamram.com/88930/opinion/speak-up-but-not-at-fordham>.

³ This correspondence reflects our understanding of the pertinent facts based on public reporting. We appreciate that you may have additional information to offer and invite you to share it with us.

⁴ *Demonstration Policy*, STUDENT HANDBOOK, FORDHAM UNIV., https://www.fordham.edu/info/21684/university_regulations/3709/demonstration_policy [<https://perma.cc/ZV54-5ZLQ>].

⁵ *Id.*

the scope and nature of those rights. But in imposing a system of institutional censorship on its RAs, Fordham betrays this commitment.

According to Fordham’s student newspaper, *The Fordham Ram*,⁶ Fordham’s policy functions as an impermissible prior restraint on speech, as it prohibits RAs from speaking to the press on ResLife-related matters, regardless of whether the speech is purportedly on behalf of the university or in their individual capacities. Prior restraints are “the most serious and the least tolerable infringement on” freedom of expression.⁷ The Supreme Court has held that the risk prior restraints pose to freedom of expression is so great that the “chief purpose” in adopting the First Amendment was to prevent their use.⁸ They are valid only in the most demanding of circumstances, such as when the government can prove the information presents a credible threat to national security.⁹

Authorities may regulate constitutionally protected speech based on its content—here, ResLife-related speech—if that regulation is the means least restrictive to expression to serve the authority’s compelling interest.¹⁰ Fordham does have a valid interest in ensuring RAs do not speak on the university’s behalf. However, this interest is not served when media policies are used to quell students’ speech as private citizens. Individuals, including students, who take employment roles at institutions committed to free expression do not relinquish their expressive rights “to comment on matters of public interest by virtue [of that employment].”¹¹ Instead, they retain their right to speak as citizens on matters of public concern.¹²

Fordham’s interest in controlling RAs’ ability to speak to the press does not meet the burden necessary to justify this broad restriction on student speech. There are less restrictive means of serving Fordham’s interests without blocking student staff’s ability to speak to the press on ResLife-related matters entirely. For example, Fordham can implement policies clearly stating that RAs may not speak to the press purporting to speak for the university but that they may do so as private citizens.

Accordingly, Fordham must rescind this restriction and publicly clarify that RAs may speak with the media in their personal capacities as private citizens on matters of public concern, provided they do not reveal information that is made confidential by law or suggest their commentary is made on behalf of the university. We also request that Fordham provide

⁶ *Speak Up, But Not at Fordham*, *supra* note 2.

⁷ *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 559 (1976).

⁸ *Near v. Minnesota*, 283 U.S. 697, 713 (1931).

⁹ See *New York Times Co. v. United States*, 403 U.S. 713, 714 (1971).

¹⁰ See *United States v. Playboy Entm’t Group*, 529 U.S. 803, 813 (citing *Sable Commc’ns of Cal., Inc. v. FCC*, 492 U.S. 115, 126 (1989))

¹¹ *Connick v. Myers*, 461 U.S. 138, 140 (1983).

¹² See *Garcetti v. Ceballos*, 547 U.S. 410, 417 (2006); see also *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 383-86 (2011) (“[P]ublic employees do not surrender all their First Amendment rights by reason of their employment. Rather, the First Amendment protects a public employee’s right, in certain circumstances, to speak as a citizen addressing matters of public concern.”).

training to RAs regarding their guaranteed expressive rights, including their right to speak to members of the press.

We appreciate your attention to our concerns and request a substantive response to this letter by Thursday, December 22, 2022.

Sincerely,

A handwritten signature in black ink, appearing to read "Sabrina C.", written in a cursive style.

Sabrina Conza
Program Officer, Campus Rights Advocacy

Cc: Charles R. Clency, Assistant Dean of Students & Director of Residential Life