



FIRE

Foundation for Individual
Rights and Expression

April 14, 2023

Dr. David T. McFaddin
Office of the President
Eastern Kentucky University
521 Lancaster Avenue
Richmond, Kentucky 40475

Sent via U.S. Mail and Electronic Mail (david.mcfaddin@eku.edu)

Dear President McFaddin:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech and the press,¹ is concerned by Eastern Kentucky University's policy barring resident advisors from speaking to reporters, which violates EKU's First Amendment obligations.²

FIRE appreciates that EKU is one of the few institutions in the country whose policies earn a "green light" rating from FIRE. We are, however, concerned that EKU betrays this reputation as a speech-protective institution by prohibiting RAs from giving comment to the media, including the student media, silencing both RAs' expressive freedom and student journalists' press freedom.

EKU's Resident Advisor Position Agreement includes a provision on media requests that cautions RAs they 'should at no time give a statement to any media source. This includes both on and off campus media outlets.'³ Student journalists at *The Eastern Progress* report that this provision has prevented them from securing RA interviews.

It has long been settled that the First Amendment is binding on public universities like EKU.⁴ The First Amendment prohibits government employers from punishing employees for

¹ For more than 20 years, FIRE has defended 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 The following reflects our understanding of the pertinent facts. We appreciate that you may have additional information to offer and invite you to share it with us.

³ *2022-23 Resident Advisor Position Agreement*, EASTERN KENTUCKY UNIV. (enclosed).

⁴ *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

speaking on matters of public concern when their speech is not pursuant to their official employment duties.⁵ Government employers may punish employee expression, including interviews with the news media, only if the employer shows (among other things) that the speech had a substantial and material negative impact on the employer's operations.⁶ RAs commenting to reporters about the RA's personal experiences is highly unlikely to produce this impact. Thus, EKU may not punish RAs who speak to reporters without seeking consent from the university.

Even worse, EKU's policy prohibiting RAs from giving interviews to the media does not simply punish employee speech but rather serves as a prior restraint—"the most serious and the least tolerable infringement on First Amendment rights."⁷ When a policy or practice "chills potential speech before it happens," government employers bear an even heavier burden than in instances of *post hoc* punishment of employee speech.⁸ Specifically, the university must demonstrate "reasonable ground to fear that serious evil will result if free speech is practiced."⁹ These fears must reflect "'real, not merely conjectural [harms],'" and EKU must be able to show "'the regulation will in fact alleviate these harms in a direct and material way.'"¹⁰ This high bar is rarely met, and courts consistently invalidate policies and practices that restrain government employees' speech.¹¹

Further, the right of government employees—including RAs at public institutions—to speak freely to journalists finds a close corollary in the public's right to know. As the Supreme Court has observed, blanket restrictions impose a "significant burden on the public's right to read and hear what Government employees would otherwise have written and said."¹² The press, including the student press, is an important conduit for the public's right to know. Courts have recognized that journalists act as "surrogates for the public" in keeping a watchful eye on government operations.¹³ Thus, obstructing journalistic access to RAs at EKU not only violates

constitutional freedoms is nowhere more vital than in the community of American schools.") (internal citation omitted); see also *DeJohn v. Temple Univ.*, 537 F.3d 301, 314 (3d Cir. 2008) (on public campuses, "free speech is of critical importance because it is the lifeblood of academic freedom")

⁵ *Pickering v. Bd. Of Educ.*, 391 U.S. 563, 568 (1968).

⁶ *Id.* at 568, 573.

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

⁸ *United States v. Nat'l Treasury Emps. Union (NTEU)*, 513 U.S. 454, 468, 475 (1995).

⁹ *Id.*

¹⁰ *Id.* at 475.

¹¹ 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 overbroad employee speech policy unconstitutional). For further discussion of government employee ban cases, see *Protecting Sources and Whistleblowers: The First Amendment and Public Employees' Right to Speak to the Media*, BRECHNER CENTER FOR FREEDOM OF INFORMATION, Oct. 7, 2019, [<https://perma.cc/7G5W-PRSP>].

¹² *NTEU*, 513 U.S. at 470; see also *Stanley v. Georgia*, 394 U.S. 557, 564 (1969) (it is "well established" that freedom of expression "protects the right to receive information and ideas.").

¹³ *Richmond Newspapers v. Virginia*, 448 U.S. 555, 573 (1980).

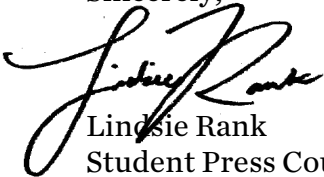
RAs' right to speak, it also violates the public's right to know about EKU's operations, a process which commonly occurs through press reporting.

The Eastern Progress's ability to cover important campus issues has been burdened by its reporters' lack of access to RAs as a direct result of EKU's censorial policy. This is not only contrary to EKU's First Amendment obligations, it also casts into doubt the university's commitment to expressive freedoms and transparency regarding decisions and events, to the detriment of EKU's immediate community and to the broader public.

EKU may restrict *official* statements on behalf of the institution itself to those made only upon approval. It cannot, however, effect a prior restraint on RAs' interactions with student journalists and other reporters without violating the First Amendment. EKU must revise its policy regarding RAs' response to media requests to make clear they are free to speak with the press in their capacities as individual citizens. In order to ensure the effects of its current censorial policy do not endure, EKU must also provide training to RAs about their First Amendment rights.

We request a substantive response to this letter no later than the close of business on Friday, April 28, 2023, confirming that EKU will revise its policy and provide First Amendment education to RAs.

Sincerely,

A handwritten signature in black ink, appearing to read "Lindsay Rank". The signature is fluid and cursive, with the first name "Lindsay" written in a larger, more prominent script than the last name "Rank".

Lindsay Rank
Student Press Counsel

Cc: Dana D. Fohl, University Counsel

Encl.



2022-2023 RESIDENT ADVISOR POSITION AGREEMENT

Name: Hall: Student ID #: CHECK ONE: NEW RA RETURNER RA — Hired before October 1 of previous year

START DATE END DATES

Fall 2022 December 3, 2022 at 6:00PM

July 31, 2022 at 4:00PM
January 9, 2023 at 9:00AM

Spring 2023 May 13, 2023 at 6:00PM

**RAs will be needed for duty coverage over all school breaks and holidays. RAs are required to maintain availability until an on-call schedule is created.*

** Dates are subject to change.*

I. PURPOSE OF THE POSITION

EKU Housing & Residence Life fosters the development, engagement, and success of our residential community by providing an inclusive home that enhances the collegiate experience. Resident Advisors (RAs) are integral to the goals of EKU Housing & Residence Life by providing community development, peer leadership, and crisis management in the on-campus communities. Resident Advisor are student leaders that wish to make a positive impact on the university campus.

Resident Advisors complete job responsibilities in the following areas: community development, peer leadership, and crisis management.

II. RESIDENT ADVISOR STATUS

Resident Advisors are divided into two categories: “New” and “Returner.”

NEW RA

Defined as an RA who has worked for EKU Housing & Residence Life for a total of less than two full academic non-summer semesters.

RETURNER RA

Defined as an RA who has already completed two full academic non-summer semesters (full being defined as being hired before October 1 of the previous year) as a Resident Advisor.

III. COMPENSATION

Resident Advisors compensation includes monetary compensation and university-operated living accommodations at no cost.

STIPEND

New Resident Advisors will receive a \$1,250 monetary compensation per semester. A Returner Resident Advisor will receive a \$1,500 monetary compensation per semester. This compensation will be paid out in several installments over the course of the semester. An RA hired mid-semester will be paid on a prorated basis determined by their hire date. An RA who resigns or is terminated from the RA position prior to their ending contract date will be paid on a prorated basis up to their resignation or termination date.

ROOM DISCOUNT

Resident Advisors will receive a university-operated living accommodation at no cost. An RA who resigns or is terminated from the

RA position prior to their ending contract date will be moved to a new Housing location and be billed on a prorated basis from their resignation or termination date.

FINANCIAL AID

The compensation package for the RA position is considered a scholarship under financial aid and may affect a Resident Advisor's financial aid package. It is the responsibility of each Resident Advisor to contact the Financial Aid office to find out if their package may be affected.

ADDITIONAL COMPENSATION

Resident Advisors may have the opportunity to earn additional compensation for duty coverage over breaks. Resident Advisors may also pick up permanent or temporary desk shifts for additional compensation.

IV. BREAK DUTY

Resident Advisors are needed to cover duty during all University breaks and holidays. Resident Advisors are required to maintain availability during all University breaks and holidays (i.e., winter break, spring break, etc.) until a duty schedule is finalized. RAs are compensated for taking on-call during breaks.

IV. HOUSING POLICIES

HOUSING ASSIGNMENT

To fulfill job responsibilities, Resident Advisors are required to live in on-campus facilities. Each Resident Advisor's Hall and community assignment is the sole decision of ECU Housing & Residence Life.

HOUSING CONTRACT

In order to be assigned to a residence hall, Resident Advisors must formally apply for ECU Housing. If a Resident Advisor resigns or is terminated from the position, they will be bound to the terms of the ECU Housing Contract.

V. EMPLOYMENT STATUS

Resident Advisors will be held accountable for not completing job responsibilities according to Housing & Residence Life policies.

PROBATION

RAs who fail to fulfill any position responsibilities may be placed on probation by their supervising RHC and/or the Associate Director for Residence Life. The terms of their probation will be outlined in a written letter and will be discussed in person. If a Resident Advisor on probation fails to fulfill position responsibilities or the terms of probation, they may be terminated from the position.

TERMINATION

The Associate Director for Residence Life reserves the right to terminate a Resident Advisor from their position if the Resident Advisor fails to complete any of their position responsibilities, with or without prior probation status.

The terminated Resident Advisor will be required to turn in their RA "trap" key immediately and relocate to a different residence hall within 48 hours. Depending on the circumstances of the termination, the RA may or may not have the opportunity to select their new room or hall.

RESIGNATION

Resident Advisors who wish to resign from the position should do so in writing in an e-mail to either their supervising RHC or the Associate Director for Residence Life. Upon resignation, the Resident Advisor will be required to turn in their RA "trap" key immediately and relocate to a different residence hall within 48 hours.

RE-APPLICATION

Each Resident Advisor may be re-hired for the following academic year upon successfully completing the RA re-application process, receiving a positive recommendation with no outstanding job accountability from their Residence Hall Coordinator, and receiving final approval from the Associate Director for Residence Life. If a Resident Advisor is placed on probation for any reason during the academic year, the Resident Advisor's supervisor and the Residence Life Leadership Team will make a final decision regarding the RA's eligibility for renewal.

VI. TRAINING

Resident Advisors are required to attend both fall and spring training. Periodically, Housing & Residence Life may require supplemental training or professional development.

Permission to miss training must be requested in writing to the supervising RHC and Associate Director for Residence Life of Leadership, Recruitment, and Training. Training exemptions are only approved by the Associate Director. Failure to attend training may result in probation and/or termination from the position. Failure to complete supplemental trainings or professional development requirements may result in probation and/or termination from the position.

VII. ACADEMIC REQUIREMENTS

Resident Advisors are required to model both academic excellence and academic progress while in the position.

CLASS ENROLLMENT & COURSE LOAD

Each Resident Advisor must be enrolled as a full-time student. Undergraduate staff must take at least 12 credit and graduate staff must be enrolled in 9 credit hours (at the graduate level).

GPA REQUIREMENT

Resident Advisors are required to maintain an overall, ECU, and semester grade point average of 2.50.

If a Resident Advisor's semester GPA is below 2.50, they will be required to meet with their supervisor to discuss their academic performance and determine an academic success plan. Depending on the circumstances, they may be placed on probation.

If a Resident Advisor's semester GPA is below 2.0, they will be required to meet with their supervisor and Associate Director to discuss their academic performance and determine an academic success plan. Depending on the circumstances, they may be placed on probation.

If a Resident Advisor's ECU or overall GPA falls below 2.50, they will be required to meet with their supervisor and the Associate Director for Residence Life to discuss their academic performance and determine an academic success plan. At this meeting the Resident Advisor will at minimum be placed on job probation. An ECU or overall GPA of below a 2.5 may result in termination.

VIII. CONDUCT

Resident Advisors are required to role model exemplary behavior and exercise sound judgement while in the position. Resident Advisors should be cognizant that they are representing Housing and Residence Life, even during non-business hours. Resident Advisors are expected to be positive role models in person and on social media.

ROLE MODEL

If a Resident Advisor is found to be in a situation which leads ECU Housing & Residence Life to question the Resident Advisor's judgment, impact, or ability to uphold job responsibilities, the Resident Advisor may be placed on probation or terminated from position.

UNIVERSITY CONDUCT REGULATIONS

If a Resident Advisor is found to be no longer in good standing with the Office of Student Conduct & Community Standards, the RA may be placed on probation or terminated from their position.

If a Resident Advisor is named in a Title IX investigation, the Resident Advisor may be temporarily or permanently relocated to another residence hall, suspended from job responsibilities (with or without pay), or terminated from the position.

MEDIA REQUESTS

All requests from the media are required to be referred to your supervisor. A resident advisor should at no time give a statement to any media source. This includes both on and off campus media outlets. If you are a member of the press, you are not to disclose any confidential or internal information.

IX. TIME MANAGEMENT

Resident Advisors are required to be present and available in their communities. We expect the resident advisor position to be priority over other employment and campus involvement. If a resident advisor is unable to balance their time appropriately, the RA may be asked to limit outside hours or involvement.

ACADEMIC INTERNSHIPS/ASSISTANTSHIPS

An RA must meet with their supervising RHC and consult with the Associate Director for Residence Life if their degree requires an academically credited internship or assistantship during the term as a Resident Advisor. This meeting should occur prior to the

academic semester of the internship or assistantship to discuss managing the responsibilities of the academic internship or assistantship along with the responsibilities of the Resident Advisor position.

OUTSIDE EMPLOYMENT/INVOLVEMENT

Resident Advisors may work up to 10 hours in another EKU-affiliated position on campus. Resident Advisors wishing to work off campus must meet with their supervising RHC to discuss managing the responsibilities of the additional employment along with the responsibilities of the Resident Advisor position. Resident Advisors that are involved in campus organizations are expected to discuss their involvement and time commitments with their supervisor.

X. JOB RESPONSIBILITIES

Resident Advisors complete responsibilities in the following areas. Additional responsibilities are outlined in the Resident Advisor manual. Resident Advisors may be asked to complete responsibilities or tasks not outlined below.

COMMUNITY DEVELOPMENT

- Complete residential curriculum requirements as outlined by supervising RHC and Associate Director for Residence Life. Complete required paperwork associated with residential curriculum requirements.
- Be visible, available, and accessible to residents in assigned community. Resident Advisors are required to sleep in their assigned room Sunday – Thursday nights and when they are on duty.
- Demonstrate actions and language that is supportive and inclusive to all members of the residence hall community. • Address resident and floor conflicts fairly and according to Housing & Residence Life policies. Submit associated paperwork and communication accurately and timely.
- Complete assigned desk hours and submit Webtime timely and accurately.
- Attend one-on-one, staff, and impromptu meetings scheduled by supervising RHC or a member of the Housing & Residence Life Leadership Team.
- Participate in hall opening and closing periods and complete associated tasks as assigned by supervising RHC.

PEER LEADERSHIP

- Establish effective and professional lines of communication with residents, Housing & Residence Life staff, and other members of the community.
- Address safety and/or policy violations fairly and according to Housing & Residence Life policies. Submit associated paperwork and communication accurately and timely.
- Respect and maintain resident privacy and/or confidentiality at all times. Uphold FERPA laws according to Housing & Residence Life policies.
- Support programs and initiatives sponsored by Housing & Residence Life, EKU, and the Division of Student Success.

CRISIS MANAGEMENT

- Participate in scheduled duty nights and complete assigned duty tasks, such as rounds, as outlined by supervising RHC and Housing & Residence Life policies.
- Respond to emergency situations according to Housing & Residence Life policies. Submit associated paperwork and communication accurately and timely.
- Abstain from alcohol consumption before and during duty shift. No alcohol may be consumed while on “break” from duty shift.

FACILITIES MANAGEMENT

- Ensure proper reporting by residential students of facility issues through the appropriate work order system • Assist in maintaining a clean and welcoming environment for all students and guests.
- Complete Health & Safety Inspections as scheduled by department and/or supervising RHC.
- Maintain appropriate use and full control of keys, equipment, and supplies.

XI. ACKNOWLEDGEMENT

I certify that I have read and understand the responsibilities and expectations of the Resident Advisor position as outlined above and in the Resident Advisor manual.

Resident Advisor Signature Resident Advisor Printed Name Date