



FIRE

Foundation for Individual
Rights and Expression

November 27, 2023

Kimberly R. Cline
c/o Nancy Gessner
Office of the President
Long Island University
720 Northern Boulevard
Brookville, New York 11548

Sent via U.S. Mail and Electronic Mail (Nancy.Gessner@liu.edu)

Dear President Cline:

FIRE¹ is disappointed to have not received a response to our enclosed October 10 letter explaining that Long Island University's punishment of the American Club for social media posts critical of transgender women violates the university's free expression promises and due process. FIRE again calls on LIU to rescind all sanctions against the American Club and confirm the university will handle complaints about clearly protected expression in a manner consistent with due process and its free expression promises.

As our prior letter explained, LIU's promise to support free expression leads students to reasonably believe their expressive rights at the university are commensurate with those the First Amendment provides, and creates a contractual obligation to that effect.² This means LIU cannot punish students for speech because others find it offensive, hateful, or uncivil.³ Moreover, LIU's policies restricting "inappropriate" and "offensive" speech—the bases for the American Club's punishment—are both vague and overbroad, and do not comport with LIU's free speech commitments. The club's social media posts also do not meet the exacting legal standard for actionable harassment.⁴

¹ As you may recall from previous correspondence, the Foundation for Individual Rights and Expression is a nonpartisan nonprofit dedicated to defending freedom of speech, expression, and conscience, and other individual rights on campus.

² *Novio v. N.Y. Acad. of Art*, 317 F. Supp. 3d 803, 805 (S.D.N.Y. 2018) ("New York State courts have permitted a student to bring a breach of implied contract action against an institution of higher education.").

³ See, e.g., *Texas v. Johnson*, 491 U.S. 397, 414 (1989); *Gay Students Org. of Univ. of N.H. v. Bonner*, 509 F.2d 652, 661 (1st Cir. 1974); *R.A.V. v. City of St. Paul*, 505 U.S. 377, 396 (1992); *Coll. Republicans at S.F. Univ. v. Reed*, 523 F. Supp. 2d 1005, 1018-20 (N.D. Cal. 2007)

⁴ See *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 651 (1999).

FIRE separately objects to LIU's sanctions against the club, as requiring a DEI action plan constitutes compelled speech,⁵ and ordering attendance at LGBTQIA+ training may easily cross the line from education to indoctrination.⁶ Moreover, the university imposed the interim suspension on the American Club *before* an initial hearing, and sustained it during the nearly three months LIU took to reach a decision, violating basic principles of due process.⁷

LIU cannot punish the American Club for its protected speech, nor can it impose sanctions that infringe on student due process rights. We therefore request a substantive response to this letter no later than close of business December 8, 2023, confirming LIU will withdraw all sanctions against the club and will revise its procedures and policies to ensure the disciplinary process comports with fundamental principles of due process.

Sincerely,



Haley Gluhanich

Program Officer, Campus Rights Advocacy

Cc: Brendan Caputo, Director of LIU Promise
Samiah Bhutta, Senior Associate Director of Student Affairs

Encl.

⁵ Universities cannot force an individual student or student organization to convey the university's preferred message on an issue, no matter how popular that message is. *Wooley v. Maynard*, 430 U.S. 705, 717 (1977).

⁶ Universities must not coerce or intimidate others into abandoning deeply held beliefs and adopting the university's preferred point of view. Harvey A. Silverglate & Jordan Lorence, FIRE'S GUIDE TO FIRST-YEAR ORIENTATION AND THOUGHT REFORM ON CAMPUS, 45-46 (2005).

⁷ See *Iota Xi Chapter v. Patterson*, 538 F. Supp. 2d 915, 924-25 (E.D. Va. 2008), *aff'd on other grounds*, 566 F.3d 138, 149 (4th Cir. 2009) (holding due process requires an opportunity to be heard before imposing sanctions).