



FIRE

Foundation for Individual
Rights and Expression

April 28, 2023

Brian Casey
President's Office
Colgate University
301 James B. Colgate Hall
13 Oak Drive
Hamilton, New York 13346

URGENT

Sent via Electronic Mail (president@colgate.edu)

Dear President Casey:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech and faculty rights,¹ is concerned by Colgate University's failure to follow its written disciplinary policies as it pursues an investigation into comments made by Professor Barry Shain. FIRE calls on Colgate to meet its due process obligations and resolve the matter without undue delay.

On April 4, Vice President for Equity and Inclusion Renee Madison emailed Shain that "[t]he Office of Equity & Diversity has received information about some concerning interactions with students, in which [Shain is] alleged to be involved."² In the email, Madison said she wanted to meet with Shain to share some initial information and that more information would follow.³ The parties met that same day, after which Madison sent an email confirming the plan to provide him "with more details about the specific allegations that have been made against [him]."⁴

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 Email from Renee Madison, Vice President for Equity & Inclusion, to Barry Shain, Professor of Political Science (Apr. 4, 2023, 8:02 AM) (on file with author). This recitation 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. To this end, please find enclosed an executed privacy waiver authorizing you to share information about this matter.

³ *Id.*

⁴ Email from Madison to Shain (Apr. 4, 2023, 2:22 PM) (on file with author).

On April 14, Madison wrote Shain with the allegations the OED received against him, which included making statements to students that are alleged to potentially implicate the University's "Student Sex- or Gender Based Discrimination and Harassment and Sexual Misconduct Policy."⁵ Madison also said:⁶

Typically . . . a Notice of Investigation is issued as soon as reasonably possible, however this time of year is impacting the timing of the Notice. Since we are at the busiest time of the spring semester, we believe that beginning an investigation after the conclusion of the academic year will provide all individuals with the best – and fullest – opportunity to participate in the investigation. Therefore, the Notice will be provided and the commencement of an investigation will occur immediately after commencement (scheduled for May 21). The Notice will provide information regarding the allegations available to the University at that time, as well as further information about the process.

However, Colgate policy provides that "investigation[s] will be thorough and as prompt as possible."⁷ Colgate is also accredited by the Middle States Commission on Higher Education, which requires any accredited institution—including Colgate—to "demonstrate . . . fair and impartial practices in . . . discipline . . . of employees[.]"⁸ A nearly 90-day delay in providing a thorough Notice of Investigation to Shain violates the due process and fundamental fairness principles Colgate promises to uphold.

Colgate's failure to follow its own policies promising procedural fairness hinders the ability of complainants, Shain, and any potential witnesses to accurately recall the events at issue. Conversely, prompt investigations allow parties the best chance at a just outcome, ensuring a meaningful opportunity to prepare for and participate in the disciplinary process.

⁵ Email from Madison to Shain (Apr. 14, 2023, 4:30 PM) (on file with author).

⁶ *Id.*

⁷ *Employee Handbook*, Investigation, COLGATE UNIV., <https://www.colgate.edu/about/campus-services-and-resources/employee-handbook> [<https://perma.cc/P4X3-N6LX>]; *Faculty Non-Discrimination and Anti-Harassment Response Procedure*, The University's Investigation and Response, Investigation, <https://www.colgate.edu/about/offices-centers-institutes/provost-and-dean-faculty/equity-and-diversity/non-discrimination-8#ii> [<https://perma.cc/D5YA-D5G2>].

⁸ *Standards for Accreditation and Requirements of Affiliation*, Standard II – Ethics and Integrity, Criteria, MIDDLE STATES COMM'N ON HIGHER ED., <https://www.msche.org/standards> [<https://perma.cc/9K6A-RHRA>].

We therefore request a substantive response to this letter no later than the close of business on May 3, 2023, given the urgent nature of this matter, confirming that Colgate will uphold due process standards by promptly and fairly resolving the allegations against Shain, providing basic procedural protections to ensure a just result for all parties.

Sincerely,



Haley Gluhanich

Program Officer, Campus Rights Advocacy

Cc: Renee Madison, Vice President of Equity and Inclusion

Encl.

Authorization and Waiver for Release of Personal Information


I, Barry Shain, do hereby authorize
Colgate University (the "Institution") to release
to the Foundation for Individual Rights and Expression ("FIRE") any and all
information concerning my employment, status, or relationship with the Institution.
This authorization and waiver extends to the release of any personnel files,
investigative records, disciplinary history, or other records that would otherwise be
protected by privacy rights of any source, including those arising from contract, statute,
or regulation. I also authorize the Institution to engage FIRE and its staff members in a
full discussion of all information pertaining to my employment and performance, and,
in so doing, to disclose to FIRE all relevant information and documentation.

This authorization and waiver does not extend to or authorize the release of any
information or records to any entity or person other than the Foundation for Individual
Rights and Expression, and I understand that I may withdraw this authorization in
writing at any time. I further understand that my execution of this waiver and release
does not, on its own or in connection with any other communications or activity, serve
to establish an attorney-client relationship with FIRE.

If the Institution is located in the State of California, I request access to and a copy of
all documents defined as my "personnel records" under Cal. Ed. Code § 87031 or Cal.
Lab. Code § 1198.5, including without limitation: (1) a complete copy of any files kept
in my name in any and all Institution or District offices; (2) any emails, notes,
memoranda, video, audio, or other material maintained by any school employee in
which I am personally identifiable; and (3) any and all phone, medical or other records
in which I am personally identifiable.

This authorization and waiver does not extend to or authorize the release of any
information or records to any entity or person other than the Foundation for Individual
Rights and Expression, and I understand that I may withdraw this authorization in
writing at any time. I further understand that my execution of this waiver and release
does not, on its own or in connection with any other communications or activity, serve
to establish an attorney-client relationship with FIRE.

I also hereby consent that FIRE may disclose information obtained as a result of this
authorization and waiver, but only the information that I authorize.

DocuSigned by:

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Signature

4/27/2023

Date