



December 14, 2020

President Ronald Nowaczyk  
Office of the President  
Frostburg State University  
101 Braddock Road  
Frostburg, Maryland 21532-2303

*Sent via Electronic Mail (president@frostburg.edu)*

Dear President Nowaczyk:

FIRE<sup>1</sup> and the Student Press Law Center<sup>2</sup> are concerned that Frostburg State University (FSU) has initiated an investigation into a student journalist, Cassie Conklin, in connection with newsgathering activities protected by the First Amendment. FIRE and the SPLC are further concerned by FSU's demands to student newspaper *The Bottom Line (TBL)*, requiring the publication to also investigate and discipline Conklin.

The timing of these actions—within days of *The Baltimore Sun* publishing a front-page story citing to Conklin's reporting in *TBL*, but a full month after a complaint of harassment was made—illustrates the retaliatory purpose behind FSU's investigations. These actions mark a deviation from FSU's constitutionally-mandated obligation to respect students' rights to freedom of speech and freedom of the press. We urge FSU to immediately conclude any investigations into Conklin—as a student or as an employee—without punishment and make clear that *TBL* is not required to comply with any directive to investigate its staff or publish anything concerning an investigation.

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<sup>1</sup> As you may recall from prior correspondence, the Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

<sup>2</sup> Founded in 1974, the Student Press Law Center (SPLC) is the nation's only legal assistance agency devoted exclusively to supporting, defending, and educating high school and college journalists about the rights and responsibilities embodied in the First Amendment and supporting the student news media in covering important issues free from censorship. The SPLC is a nonpartisan, nonprofit organization.

## I. FSU Investigates Student Reporter for Alleged Harassment

The following is our understanding of the pertinent facts. We appreciate that you may have additional information to offer and invite you to share it with us. Please find enclosed executed waivers authorizing you to share information with FIRE.

Throughout the fall, FSU student and *TBL* reporter Cassie Conklin has penned a number of reports related to criticism of FSU's response to the COVID-19 pandemic, staff layoffs, and other issues on campus.<sup>3</sup> On November 20, *The Baltimore Sun* cited Conklin's reporting in a discussion of FSU's response to COVID-19.<sup>4</sup>

On November 23, Conklin signed employment paperwork presented to her by FSU in order to receive a \$75 stipend for her work on *TBL*. While Conklin had been writing for *TBL* since the beginning of the school year, the publication has a program under which reporters who write at least 12 stories over the course of a semester receive a \$75 stipend.<sup>5</sup> Having written well over 12 stories during the fall term, Conklin was required to complete employment paperwork in order to receive her \$75 stipend. Prior to this, Conklin did not have a formalized employment relationship with *TBL*.<sup>6</sup>

Later that day, *TBL*'s editor in chief and faculty adviser, Delanie Blubaugh and Jill Morris, respectively, were called to a meeting with you and FSU general counsel Brad Nixon. During that meeting, you and Nixon told Blubaugh and Morris that Conklin had been recorded on a security camera slipping a threatening note under the door of an FSU staff member. The staff member, Melissa Martz, had filed a complaint of harassment concerning the matter. While this alleged harassment and complaint took place on October 21, Blubaugh and Morris were advised only on November 23—a month later, and immediately after Conklin was called to formalize an employment relationship—that *TBL* must investigate Conklin as a *TBL*

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<sup>3</sup> Cassie Conklin, *FSU Attempts to Silence Students Who Speak Out About COVID-19, Says Resident Assistants*, THE BOTTOM LINE (Nov. 12, 2020), <https://thebottomlinenews.com/fsu-attempts-to-silence-students-who-speak-out-about-covid-19-says-resident-assistants>; Cassie Conklin, *Over a Dozen Frostburg Students Vacate the Dorms Because of FSU's Handling of COVID-19, Others are "Stuck" or Worried About Their Grades*, THE BOTTOM LINE (Nov. 1, 2020), <https://thebottomlinenews.com/over-a-dozen-frostburg-students-vacate-the-dorms-because-of-fsus-handling-of-covid-19-others-are-stuck-or-worried-about-their-grades>; Cassie Conklin, *Student RA Sick with COVID In the Dorm for Six Days, FSU Aware But Mostly Unresponsive*, THE BOTTOM LINE (Oct. 30, 2020), <https://thebottomlinenews.com/student-ra-sick-with-covid-in-the-dorm-for-six-days-fsu-aware-but-mostly-unresponsive>; Cassie Conklin, *"We're Gonna Win;" AFSCME Union Holds Rally At Frostburg State Following Layoff Announcement*, THE BOTTOM LINE (Nov. 10, 2020), <https://thebottomlinenews.com/were-gonna-win-afscme-union-holds-rally-at-frostburg-state-following-layoff-announcement>.

<sup>4</sup> Jean Marbella, *Allegheny County watched from afar as coronavirus hit 'downstate' Maryland. Now, it's running rampant there*, BALTIMORE SUN (Nov. 20, 2020), <https://www.baltimoresun.com/coronavirus/bs-md-allegany-county-coronavirus-20201120-pbj3qpbrgbc3orruqlsutlazq-story.html?outputType=amp>.

<sup>5</sup> Email from Delanie Blubaugh to Conklin, Aug. 24, 2020, 12:08 PM (on file with author); *see also* Email from Kathi Perkins to Conklin, Nov. 19, 2020, 9:35 AM (on file with author).

<sup>6</sup> Conklin also works 6.5 hours each week for the FSU Communications Department as part of a work-study program. However, it does not appear her employment relationship with the Communications Department has been implicated in this situation.

employee and discipline her. They were also instructed to write a letter to you identifying the actions they chose to take in response to Conklin’s alleged harassment.

Also on November 23, Conklin received an email from Artie Travis, FSU Vice President for Student Affairs, asking Conklin to meet to discuss the allegation against her.<sup>7</sup> The email assured that the harassment allegation would “not become a part of any conduct record at this time.”<sup>8</sup>

Conklin and Travis met, joined by FSU Dean of Students Carl Crowe, on November 24.<sup>9</sup> During this meeting, Travis alerted Conklin to the allegations of harassment that had been filed against her by Martz.<sup>10</sup> During the meeting, Travis’ description of Conklin’s allegedly harassing conduct changed multiple times. While he first alleged that she had slipped a threatening note under Martz’s door, as you had told Blubaugh the previous day, he then said that she had instead posted a note *on* Martz’s door, and later that Conklin had placed a note *outside* Martz’s door.<sup>11</sup>

Travis claimed that the monthlong delay between the alleged incident and the action against Conklin was because he wanted to wait until Conklin had completed her final exams before placing this additional stress upon her.<sup>12</sup> However, the meeting between Travis, Conklin, and Crowe took place several hours before Conklin was due to take a final exam,<sup>13</sup> as FSU’s final exams continued through November 24.<sup>14</sup> Travis explained to Conklin that her conduct was brought to the attention of both the student conduct office (in Conklin’s role as a student) and the president’s office (in Conklin’s role as a purported employee “because of [her] role with the newspaper”).<sup>15</sup>

FSU has been unwilling to share with Conklin the content of the note the university alleges she authored. The video evidence FSU presented<sup>16</sup>—after some delay—confirms Conklin’s understanding that that the alleged incident occurred during a sit-in protest that took place in response to comments by Martz. Conklin attended that sit-in to document it as a journalist. She took photos of the event, which she then shared on social media.<sup>17</sup> FSU’s video documents a note falling from Martz’s door into an empty hallway.<sup>18</sup> Several moments later, Conklin

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<sup>7</sup> Email from Artie Travis to Cassie Conklin, Nov. 23, 2020, 12:44 PM (on file with author).

<sup>8</sup> *Id.*

<sup>9</sup> Recording: Meeting between Conklin, Crowe, and Travis (Nov. 24, 2020) (on file with author).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> FROSTBURG STATE UNIV., FINAL EXAMS, <https://www.frostburg.edu/about-frostburg/Administrative-Offices/registrars-office/registrars-office/Final-Exams.php> (last visited Dec. 11, 2020).

<sup>15</sup> *Id.*

<sup>16</sup> Video recording: Martz’s door (Oct. 21, 2020) (on file with author).

<sup>17</sup> Cassie Conklin, photographs of Frostburg State University sit-in, FACEBOOK (Oct. 21, 2020), <https://www.facebook.com/1225410060/posts/10224167608997694/?d=n>.

<sup>18</sup> *Supra* n. 16.

walks into the hallway and takes photos of Martz’s door and the fallen note before reaching to pick up the note to re-stick it to Martz’s door.<sup>19</sup> Conklin’s photo of the note shows it bore a positive message of thanks to Martz.

This understanding of the facts is apparently shared by Crowe, who wrote to Conklin on November 30 to apprise her that he had reviewed the video evidence and concluded that there was no evidence that she had violated FSU’s student code of conduct.<sup>20</sup> Despite this, Conklin and *TBL* have received no further correspondence from your office, FSU’s general counsel’s office, or the Student Affairs Division regarding potential disciplinary actions being taken against Conklin as an employee or your demand that *TBL* conduct its own investigation.

## II. FSU’s Actions Against Conklin Ignore Students’ Rights to Free Expression

It appears FSU has no evidence that Conklin engaged in harassing behavior. Therefore, the university’s actions can only be understood as an effort to chill Conklin’s expressive rights and to intimidate *TBL*.

It has long been settled law that the First Amendment is binding on public colleges like FSU. *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 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”).

### A. *Conklin’s journalistic activities are protected by the First Amendment and Maryland state law.*

FSU’s actions against Conklin appear to be in direct retaliation for her journalistic activities, all of which are protected by the First Amendment as well as Maryland’s New Voices Act.<sup>21</sup>

Courts have long held that adverse administrative actions taken against student media in response to content violate the First Amendment. *See, e.g., Trujillo v. Love*, 322 F. Supp. 1266, 1271 (D. Colo. 1971) (holding that “[h]aving established a particular forum for expression, officials may not then place limitations upon the use of that forum which interfere with protected speech”); *Schiff v. Williams*, 519 F.2d 247, 260–61 (5th Cir. 1975) (finding that dismissing editors due to alleged inaccuracies in a student newspaper violated the First Amendment); *Joyner v. Whiting*, 477 F.2d 456, 462 (4th Cir. 1973) (“[i]t may well be that a college need not establish a campus newspaper . . . . But if a college has a student newspaper, its publication cannot be suppressed because college officials dislike editorial comment”);

<sup>19</sup> *Id.*

<sup>20</sup> Email from Crowe to Conklin, Nov. 30, 2020, 3:50 PM (on file with author).

<sup>21</sup> MD. CODE ANN., EDUC. § 15-119.

*Stanley v. Magrath*, 719 F.2d 279, 282 (8th Cir. 1983) (“[a] public university may not constitutionally take adverse action against a student newspaper . . . because it disapproves of the content of the paper”); *Antonelli v. Hammond*, 308 F. Supp. 1329, 1337 (D. Mass. 1970) (holding that freezing a university newspaper’s funding because administrators deemed its content “garbage” was a violation of student journalists’ First Amendment rights).

The unwavering agreement of federal circuits regarding the free press rights of collegiate journalists led the United States Court of Appeals for the Second Circuit to note that “*all* the circuits that have considered the issue have determined that, at the very least, when a public university creates or subsidizes a student newspaper and imposes no *ex ante* restrictions on the content that the newspaper may contain, neither the school nor its officials may interfere with the viewpoints expressed in the publication without running afoul of the First Amendment.” *Husain v. Springer*, 494 F.3d 108, 124 (2d Cir. 2007) (emphasis in original).

Conklin’s critical coverage of FSU remains protected because the First Amendment does not require speakers to take an uncritical eye of the government—of which FSU is a part. Instead, criticism of government officials is at the core of the First Amendment’s protection. “[I]t is a prized American privilege to speak one’s mind, although not always with perfect good taste, on all public institutions.” *Bridges v. California*, 314 U.S. 252, 270 (1941). So central is this ability to criticize officials that the United States Supreme Court, affirming that “debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials,” determined that a higher standard of fault applies to speech-related torts where a public official is the plaintiff. *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

Further, Maryland has specifically extended statutory protections to the press freedom rights of student journalists through the New Voices Act.<sup>22</sup> The act specifies that “a student journalist may not be disciplined for” engaging in journalistic activity.<sup>23</sup>

#### **i. Conklin’s actions do not amount to harassment.**

Properly defined, harassment is not protected expression and falls outside the protections provided by expressive freedom. In *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999), the Supreme Court set forth the definition of hostile environment harassment in the educational setting. In order for conduct (including expression) to constitute actionable harassment, it must be (1) unwelcome, (2) discriminatory on the basis of gender or another protected status, and (3) “so severe, pervasive, and objectively offensive that it can be said to deprive the victim[] of access to the educational opportunities or benefits provided by the school.” By definition, this includes only extreme and typically repetitive behavior—conduct so serious that it would prevent a reasonable person from receiving his or her education.

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at § 15-119(f)(1).

Conklin’s actions—taking photos of Martz’s door to document a sit-in that involved many FSU students, as well as re-sticking a fallen sticky note that praised Martz—do not constitute conduct that is objectively unwelcome, as holding an administrative role at a public university necessarily amounts to consent to criticism and scrutiny by student journalists. Moreover, Conklin’s actions are not discriminatory because there is no indication that they were undertaken on the basis of Martz’s membership in a protected class. Even if a discriminatory purpose could be attributed to Conklin, the act of taking a photo of a door and re-posting a note that had fallen off of it does not approach *Davis*’ baseline for unprotected harassment, as that act is neither severe, pervasive, or objectively offensive. This is particularly true because Conklin’s conduct—even accepting FSU’s construction of events—represents a single act, not a pattern of discriminatory behavior.<sup>24</sup> While Martz was clearly upset enough about the events of October 21 that she reported Conklin for alleged harassment, a reasonable person could not conclude that Conklin’s actions meet the *Davis* standard.

***B. FSU’s actions amount to unconstitutional retaliation against Conklin for her journalism.***

The timing and circumstances of FSU’s actions against Conklin raises serious concerns that the investigation into Conklin is motivated by Conklin’s unflattering reporting on the university’s administration.

In particular, FSU’s administration waited a month after an alleged incident of harassment to take action against Conklin. Instead, FSU initiated disciplinary proceedings mere *days* after Conklin’s reporting was cited in *The Baltimore Sun*, a high-profile outlet, drawing negative attention to the university’s handling of the pandemic. Those proceedings included an investigation predicated on Conklin’s purported employment relationship with *TBL* (and, by extension, the university). Importantly, those proceedings were initiated within minutes of Conklin’s execution of employment paperwork.

If FSU had been sincerely concerned that Conklin had engaged in unlawful harassment *on camera* on October 21, it is odd to wait an entire month before taking clear action. The fact that FSU dredged up Martz’s complaint an entire month after it was made calls into question whether the university was, in fact, concerned with Conklin’s behavior, or was instead concerned by her growing portfolio of reporting critical of the university and was seizing upon dubious charges as a pretext to harass a critical journalist.

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<sup>24</sup> If it was shown that Conklin did, in fact, leave a message at Martz’s door that constituted a true threat, an investigation and punishment may be warranted. However, true threats are narrowly defined within First Amendment law. For a statement to constitute a true threat, it must be a statement through which “the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.” *Virginia v. Black*, 538 U.S. 343, 359 (2003). FSU has thus far provided no evidence that Conklin communicated such a message on October 21, and, again, it would be highly irregular for FSU to have become aware of such a message and to have not acted upon it for an entire month if it was, in fact, threatening.

**i. FSU’s investigations alone constitute retaliation.**

Even if FSU’s investigation does not mature into formal charges or sanctions against Conklin, the mere maintenance of an investigation into constitutionally-protected speech can itself violate the First Amendment. When “an official’s act would chill or silence a person of ordinary firmness from future First Amendment activities,” that act violates the First Amendment. *Mendocino Environmental Center v. Mendocino County*, 192 F.3d 1283, 1300 (9th Cir. 1999).

Accordingly, several federal appellate courts have held that government investigations into protected expression violate the First Amendment. *See White v. Lee*, 227 F.3d 1214, 1228 (9th Cir. 2000) (holding that a government investigation into clearly protected expression chilled speech and therefore violated the First Amendment). This includes investigations by university officials. *See, e.g., Levin v. Harleston*, 966 F.2d 85, 89 (2d Cir. 1992) (implicit threat of discipline by university administrator in initiating formal investigation into faculty member’s writings).

That FSU indicated it would consider action against Conklin either as a student or as an employee, the fact that she was called to meet with the Vice President for Student Affairs and Dean of Students, and the fact that FSU insisted *TBL* investigate and potentially discipline Conklin, all constitute an implicit—if not express—threat of discipline. Coupled with the suspect timing of FSU’s actions, it is only because of Conklin’s resilient attitude and exceptional commitment to safeguarding her rights that a chilling effect has not taken hold. A reasonable and less resilient student journalist would certainly have been chilled by FSU’s actions.

**C. FSU cannot discipline Conklin as an employee.**

FSU’s Dean of Students has cleared Conklin of all charges as a student under its Code of Conduct. Nonetheless, FSU continues to pursue actions against Conklin—including an investigation and insistence that *TBL* conduct its own investigation. FSU cannot salvage a suspect and meritless investigation against a student by transforming it into an employee investigation, nor can it compel a student media outlet to conduct an investigation.

Even leaving aside the obvious First Amendment concerns attendant with pursuing discipline (of any form) against a student journalist, FSU’s pursuit of an investigation into Conklin as an *employee* fundamentally misconceives the university’s relationship with its student journalists. While acting in her role as a reporter for *TBL*, Conklin is not an employee of the university, even if the institution performs ministerial tasks associated with her compensation by the newspaper.

The Department of Labor’s Wage and Hour Division, which administers the Fair Labor Standards Act (the federal minimum wage act), has held in multiple advisory opinions that student journalists are not “employees” for purposes of the Act. As long as student media programs are closely affiliated with an educational institution and provide educational

experience to students, student journalists are exempt from the federal minimum wage requirement and are thus not employees of the university. This includes students working for independent student media organizations, as long as the publication can demonstrate that it provides training and an educational experience for its student staff.<sup>25</sup>

Further, even assuming for argument's sake that Conklin is an employee of FSU in her role as *TBL* reporter, the law is well-established that employees of government institutions like FSU retain a First Amendment right to speak as private citizens on matters of public concern and may not be disciplined or retaliated against for their constitutionally protected expression unless the government employer demonstrates that the expression hindered "the effective and efficient fulfillment of its responsibilities to the public." *Connick v. Myers*, 461 U.S. 138, 150 (1983).

Thus, even if Conklin is an employee of FSU, she enjoys a right to report on matters of public concern for *TBL* or in her own capacity, such as on her personal social media.<sup>26</sup> The same protections outlined above apply to Conklin regardless of her employment relationship with *TBL* or FSU. She still maintains a right to gather and disseminate news, to criticize FSU, and to—again, taking FSU's version of the facts as true—send a note to an FSU staff member.

***D. By threatening a TBL reporter, FSU implicates the rights of the publication.***

Retaliation for newsgathering activities not only violates Conklin's rights as a student and as a reporter, but also *TBL*'s rights as a student publication. When a chilling effect is visited upon its reporters, *TBL* is also harmed, and such a result is untenable under any notion of the freedom of press guaranteed by the First Amendment. Thus, any time a university violates a student reporter's right to gather and disseminate the news, it also violates the rights of that reporter's publication.

In addition to the chilling effect occasioned by the university's investigation into Conklin individually—a chilling effect that will deter others at *TBL* from engaging in newsgathering activities—FSU's actions against *TBL* go one step further. By calling *TBL*'s editor and adviser to a meeting to demand that the newspaper investigate and punish Conklin, then document *TBL*'s response in a letter to you, FSU sought to enlist the student newspaper in retaliating against Conklin. This conduct will have a serious chilling effect on the willingness of student journalists and their advisers to engage in critical newsgathering activities.

Simply put, a public university may not, in keeping with its constitutional obligations, make such demands of an independent student newspaper. As one federal appellate court aptly explained, "no . . . content control is justified for communication among students which is not

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<sup>25</sup> For a discussion of these opinion letters, see David C. Yamada, *The Employment Law Rights of Student Interns*, 35 CONN. L. REV. 215, 227-30 (2002); see also U.S. Dept. of Labor, Wage and Hour Division Field Operations Handbook, 10b24, 10b03(e) (Oct. 1993).

<sup>26</sup> For example, Conklin posted photos from the sit-in demonstration on her personal Facebook page. As a result, she was engaged in newsgathering activities as both a journalist affiliated with *TBL* and as a citizen.



part of the educational program” because “[i]nterstudent communication does not interfere with what the school teaches; it enriches the school environment for the students.” *Burch v. Barker*, 861 F.2d 1149, 1157, 1159 (9th Cir. 1988).

While FSU appears to have attempted to justify its actions as an employment matter (rather than as an effort at content control), a student publication’s choice of whom to employ necessarily influences its content. By attempting to exert power over *who* will write for *TBL*, FSU’s administration attempts to hold authority over *what kinds of content* will be included in its pages, if by no other means than pressuring *TBL* to take disciplinary action against any reporter who dares criticize the university.

Further, FSU’s actions here are enough to cause an unconstitutional chilling effect not only upon Conklin, but upon the entire editorial leadership of *TBL*. Seeing Conklin face potential disciplinary actions, coupled with being summoned to discuss the matter with administrators, places editors and staff of a student newspaper on notice that critical content will yield administrative consequences for their colleagues. As an independent student publication, *TBL* should instead be charged with handling its own personnel and content matters without the influence of FSU administration.

### III. Conclusion

It is the responsibility of journalists, including student journalists, to serve as “surrogates for the public,” keeping a watchful eye on the operations of government. *Richmond Newspapers v. Virginia*, 448 U.S. 555, 573 (1980). FSU’s actions undermine these ideals.

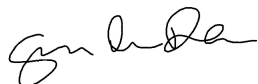
To remedy the potential chilling effect caused by FSU’s actions in this matter, FSU must immediately announce the termination of any investigation or disciplinary proceeding against Conklin and clarify that *TBL*’s independence extends to its personnel decisions.

We request receipt of a response to this letter by the close of business on December 30, 2020.

Sincerely,



Lindsay Rank  
Program Officer, Individual Rights Defense Program  
Foundation for Individual Rights in Education



Sommer Ingram Dean  
Staff Attorney  
Student Press Law Center:

Encl.

## Authorization and Waiver for Release of Personal Information

I, Cassie Nicole Conklin, do hereby authorize Frostburg State University (the "Institution") to release to the Foundation for Individual Rights in Education ("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 in Education, 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 in Education, 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:  
Cassie Conklin  
21BBF6D721F441B...

Signature

12/11/2020

Date

## **Authorization and Waiver for Release of Personal Information and Request for FERPA Records**

This is an authorization for the release of records and information, as well as a request for records, under the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and its applicable regulations (particularly 34 CFR § 99.30).

I, Cassie Nicole Conklin, born on 10/27/1990, do hereby authorize Frostburg State University (the "Institution") to release to the Foundation for Individual Rights in Education ("FIRE") any and all information concerning my current status, disciplinary records, or other student records maintained by the Institution, including records which are otherwise protected from disclosure under the Family Educational Rights and Privacy Act of 1974. I further authorize the Institution to engage FIRE's staff members in a full discussion of all matters pertaining to my status as a student, disciplinary records, records maintained by the Institution, or my relationship with the Institution, and, in so doing, to fully disclose all relevant information. The purpose of this waiver is to provide information concerning a dispute in which I am involved.

I have reached or passed 18 years of age or I am attending an institution of postsecondary education.

In waiving such protections, I am complying with the instructions to specify the records that may be disclosed, state the purpose of the disclosure, and identify the party or class of parties to whom disclosure may be made, as provided by 34 CFR 99.30(b)(3) under the authority of 20 U.S.C. § 1232g(b)(2)(A).

**Records requested under FERPA:** I request access to and a copy of all documents defined as my "education records" under 34 CFR § 99.3, including without limitation:

- A complete copy of any files kept in my name in any and all university offices;
- any emails, notes, memoranda, video, audio, or other material maintained by any school employee in which I am personally identifiable;
- any and all phone, medical or other records in which I am personally identifiable; and
- the log of requests for and disclosures of my education records, as required by 34 CFR § 99.32(a).

**Records requested under state public records law:** To the extent the applicable public records law would require a faster response, a more comprehensive response, or production of copies of records:

- I request, pursuant to the applicable state public records law, copies of all records that would be available for my inspection under FERPA;
- To the extent the public records law allows disclosure of responsive records, I request that such records be produced in an electronic format, preferably by email.

**Fees:** I agree to pay any reasonable copying and postage fees of not more than \$20. If the cost would be greater than this amount, please notify me. Bear in mind, however, that FERPA prohibits the imposition of a fee to search or retrieve records (34 CFR § 99.11).

**Request for Privilege Log:** If any otherwise responsive documents are withheld on the basis that they are privileged or fall within a statutory exemption, please provide a privilege log setting forth (1) the subject matter of the document; (2) the person(s) who sent and received the document; (3) the date the document was created or sent; and (4) the basis on which it is the document is withheld.

**Request for Redaction Log:** If any portion of responsive documents must be redacted, please provide a written explanation for the redaction including a reference to the statutory exemption permitting such redaction. Additionally, please provide all segregable parts of redacted materials.

Per 34 CFR § 99.10(b), these records must be made available within **45 days**.

I request that the records be sent to me via email at cnknieriem@gmail.com and to FOIA@thefire.org.

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 in Education, 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:  
*Cassie Conklin*  
21BBF6D721F441B...  
\_\_\_\_\_  
Student's Signature

12/9/2020  
\_\_\_\_\_  
Date